

TRANSCRIPT OF RECORD

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1917

No. 85

A. M. DOUG, ADMINISTRATOR OF THE ESTATE OF JOHN
PETERSON, DECEASED, PLAINTIFF IN ERROR.

vs.
W. C. BROWN, TREASURER OF THE STATE OF IOWA.

ON WRIT OF HABEAS CORPUS TO REMOVE FROM THE SUPREME COURT OF THE STATE OF IOWA.

FILED OCTOBER 11, 1917

(15,200)

(25,092)

SUPREME COURT OF THE UNITED STATES.

OCTOBER TERM, 1916.

No. 351.

A. M. DUUS, ADMINISTRATOR OF THE ESTATE OF JOHN
PETERSON, DECEASED, PLAINTIFF IN ERROR,

vs.

W. C. BROWN, TREASURER OF THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

INDEX.

	Original.	Print
Stipulation as to transcript of record.....	<i>a</i>	1
Appellant's abstract of record.....	1	2
Proof of service of abstract.....	1	2
List of heirs.....	2	2
Order as to exemption, &c.....	3	3
Report of administrator.....	3	3
Objections to report of administrator.....	8	6
Stipulation of fact, &c.....	10	7
Order, judgment and decree, and exceptions.....	10	7
Appeal	11	8
Certificate to record.....	11	8
Appellant's amendment to abstract of record.....	13	9
Proof of service of amendment to abstract.....	13	9
Certificate to amendment to abstract.....	14	9

	Original. Print
Order of argument and submission.....	15
Judgment	16
Opinion, Deemer, J.....	17
Petition for writ of error and allowance.....	27
Assignment of errors.....	29
Writ of error.....	31
Prayer for reversal.....	34
Citation and service.....	36
Bond on writ of error.....	38
Clerk's certificate	39
Clerk's return to writ of error.....	39

In the Supreme Court of Iowa.

In the Matter of the Estate of JOHN PETERSON, Deceased.

A. M. DUUS, Adm., Plaintiff in Error,

vs.

W. C. BROWN, Treasurer of State, Defendant in Error.

Stipulation as to Transcript.

It is agreed that the clerk in making up the transcript to be sent to the United States Supreme Court, shall include therein the following record, papers and filings, which shall constitute the record. (This stipulation being made in accordance with Rule VIII of the United States Supreme Court Rules.)

1. Appellant's Abstract of Record with the acceptance of service thereon, complete.

2. Appellant's Amendment to Abstract, with acceptance of service.

3. The order or judgment of the Supreme Court entered in the case, with the record entry.

4. The opinion of the Supreme Court of Iowa as to the cause.

5. The originals of the following, namely, Petition for Writ of Error, Assignment of Errors, the Writ of Error, and the prayer for Reversal, together with the original orders of allowance of the various instruments named.

6. The original Citation with acceptance of service thereof.

7. A copy of the bond with the order of approval thereof.

8. A copy of this stipulation.

9. The clerk's certificate of lodgment showing the bond and other papers lodged with him. The clerk's certificate authenticating the transcript. The clerk's return to the writ.

The briefs and arguments are not to be included. All papers must show the filing indorsements of the clerk, and acceptances of service, and service, if any.

NELSON MILLER,

Att'y for A. M. Duus, Adm.;

GEORGE COSSON,

Att'y Gen'l, and

C. A. ROBBINS,

Ass't Att'y Gen'l,

Att'ys for W. C. Brown, Treasurer.

1

Filed Feb'y 24, 1914.

In the Supreme Court of Iowa, May Term, 1914.

In the Matter of the Estate of JOHN PETERSON, Deceased.

In Probate.

Appeal from Plymouth County District Court.

Hon. Wm. Hutchinson, Judge.

Nelson Miller, Attorney for Appellant.

G. T. Struble, Attorney for the Administrator, of Counsel.

Q. A. Willis, Clarence D. Roseberry, County Attorney, Attorneys for the Appellee.

Appellant's Abstract of Record.

Due, legal and timely service of the within abstract of record upon the undersigned is hereby acknowledged and accepted, and the receipt of a true copy thereof is acknowledged, on this 24 day of Feb'y, A. D. 1914.

CLARENCE D. ROSEBERRY,
Attorney for Appellee.

2 John Peterson, a resident of Plymouth County, Iowa, and a citizen of the United States, died on March 13th, 1909, intestate, unmarried and without issue of his body surviving and with no adopted children. A. M. Duus was duly appointed by the district court of said county the administrator of his estate. He duly qualified and took charge of the closing up of the estate, and on June 12th, 1909, filed with the clerk of said county as belonging to the estate of deceased, the following description of real estate: The north one-half of the northeast one-fourth of section Twenty (20), township Ninety-Three (93), range Forty-Four (44), in Plymouth County, Iowa. The estate was duly appraised by the collateral inheritance tax appraisers of said county. On November 25th, 1913, the administrator filed with the clerk the following

List of Heirs.

Ida Wilhelminna Soderberg Eklund, of full age and living in Sweden, a niece.

Ernest Emil Nelson, of legal age and living in Illinois, a nephew.

Ingeborg Elise Carlson, of legal age and living in Wisconsin, a niece.

Annette Kristina Petersson Olsson Warnlund, of legal age and living in Sweden, widow of decedent's deceased nephew.

Elsa Siri Maria Olsson Warnlund, a minor, living in Sweden, a child of decedent's deceased nephew.

Nils Gustaf Wilhelm Olsson Warnlund, a minor, living in Sweden, a child of decedent's deceased nephew.

Ivan Einar Edvard Olsson Warnlund, a minor, living in Sweden, a child of decedent's nephew.

On November 25th the court made an order which as far as material to this cause is as follows:

3

Order.

"And the court having further taken under consideration the claim for exemption from the payment of collateral inheritance tax made by the administrator in the list of heirs and report filed by him on the 25th day of Nov. 1913, and being fully advised in the premises, finds that the same is reasonable and should be allowed. It is therefore ordered that the sum of \$960.97 be and is hereby allowed as exempt from the payment of any collateral inheritance tax to the State of Iowa, the same being for funeral expenses, court costs, collateral inheritance tax, appraisers' fees and the statutory administrator's fees."

W. D. BOIES, *Judge.*

On January 10th, 1914, A. M. Duus, the administrator, filed a report which after setting out various payments made by the administrator, disclosed that there was a balance on hand of \$2,533.07 to be accounted for, and then proceeds as follows:

Report of Administrator.

"That of said last named sum, \$848.95 is in the shape of drafts purchased to pay the collateral inheritance tax to the State of Iowa, which sum is in dispute as between this administrator and the Treasurer of State, and the same is more fully referred to and set out hereafter.

With respect to the said collateral inheritance tax the administrator reports that by and through the attorney representing the heirs, this administrator did, on December 23rd, 1913, tender to the Treasurer of the State of Iowa, at Des Moines in said state, the gross sum of \$848.95 as and for the collateral inheritance tax due

4 to the State of Iowa from said estate. That said tender was made by offering to pay that sum in writing, and tendering therewith seven bank drafts, payable to "W. C. Brown, Treasurer of State," for the respective sums hereinafter set forth, as and for the collateral inheritance tax due to the State of Iowa on the shares inherited by the respective heirs, whose names, and the place of their residence, whether Aliens or citizens as far as known, the fractional share inherited with appraised value thereof after deducting the exemptions, are set opposite the respective sums thus tendered as aforesaid, and being as follows:

Ernst Emil Nelson, residing in Illinois, citizen of the United States, inheriting one fourth of the estate, appraised value after deducting exemptions, \$3,360.36.	
Nephew, Sum tendered.....	\$212.23
Ingeborg Elise Carlson, residing in Wisconsin, presumably a citizen of the United States, inheriting one-fourth of the estate, appraised value after deducting exemptions, \$3,306.36. Niece, Sum tendered.....	
	212.23
Ida Wilhelminna Soderberg Eklund, residing in Sweden, a citizen there, inheriting one-fourth of the estate, appraised value after deducting exemptions, \$3,306.36. Niece. Sum tendered	
	212.23
Annette Kristina Peterson Olsson Warnlund, residing in Sweden, citizen there, inheriting one-twelfth of the estate, appraised value after deducting exemptions, \$1,102.14. Widow of nephew. Sum tendered.....	
	70.75
Elsa Siri Maria Olsson Warlund, residing in Sweden, a citizen there, inheriting one-eighteenth of the estate, appraised value after deducting exemptions, \$734.76. Child of nephew. Sum tendered.....	
	47.17
5 Nils Gustaf Wilhelm Olsson Warnlund, residing in Sweden, a citizen there, inheriting one-eighteenth of the estate, appraised value after deducting exemptions, \$734.76. Child of nephew. Sum tendered..	
	47.17
Ivan Einar Edvard Olsson Warnlund, an Alien residing in Sweden, a citizen there, inheriting one-eighteenth of the estate, appraised value after deducting exemptions, \$734.76, child of nephew, Sum tendered.....	
	47.17
Total sum tendered.....	
	\$848.95

The last five above named persons are Aliens residing in Sweden at the time of the death of the deceased and still reside there. The first two resided in the United States at the time of death of deceased and still reside here.

He further reports that the deceased John Peterson died on March 13th, 1909, that the total appraised value of his estate as appraised by the collateral inheritance tax appraisers is \$14,186.42. That this court has heretofore allowed as exempt from said appraisement the sum of \$960.97, leaving a net appraised value for such taxation purposes of \$13,225.45.

That the sums thus tendered are five per cent of the appraised value of the shares inherited by the various heirs, after deducting the exemptions allowed by the court, together with interest thereon at eight per cent computed from a day fifteen months after the death of deceased as provided by statute. That at the time of making the said tender a receipt was demanded for said payments, but the Treasurer of State refused to give a receipt, and refused the said tender, and returned the various bank drafts thus tendered as aforesaid. That no objection was made by the said Treasurer to the said tender save as to the amount thereof. That he claimed that the tax should

6 be computed at the rate of Twenty per cent in place of Five per cent. That said drafts are now in the possession of this administrator, and he is ready, able and willing to pay them to the Treasurer of State at any time that he may wish, and he has at all time- since the said tender been willing to do so, or in lieu thereof to pay the sums of money for which the drafts were drawn.

That on behalf of the Aliens above named, the said tender was made under and by virtue of the rights conferred by the Sixth Article of a Treaty of Amity and Commerce negotiated and promulgated between the governments of the United States and Sweden in the year 1783, and which Article was in force at the time of the death of deceased, and being as follows:

"The subjects of the contracting parties in the respective states may freely dispose of their goods and effects, either by testament, donation, or otherwise, in favor of such persons as they think proper; and their heirs, in whatever place they shall reside, shall receive the succession even ab intestato, either in person or by their attorney, without having occasion to take out letters of naturalization. These inheritances, as well as the capitals and effects which the subjects of the two parties, in changing their dwelling, shall be desirous of removing from the place of their abode, shall be exempt from all duty called 'droit de detraction' on the part of the government of the two states, respectively. But it is at the same time agreed that nothing contained in this article shall in any manner derogate from the ordinances published in Sweden against emigration, or which may hereafter be published, which shall remain in full force and vigor. The United States, on their part, or any of them, shall be at liberty to make, respecting this matter, such laws as they think proper."

7 Wherefore, because of the matters above set forth, the administrator prays the court to approve the foregoing report, the payments therein reported, and all the acts of the administrator as reported; that it order that the respective sums of money heretofore tendered by bank drafts to the treasurer of state, be paid to the clerk of this court upon his receipt, and the clerk ordered to pay the same to the treasurer of State whenever he shall ask for the same; and thereupon that it further order, adjudge, and decree, that the estate, the administrator, and the respective heirs of the deceased, have discharged all their obligations to the State of Iowa under the collateral inheritance tax laws of the state; that the real estate belonging to said estate, be freed, absolved, relieved and discharged from the lien imposed by any collateral inheritance tax law of the State of Iowa by reason of the existence of this estate; that the administrator and his bondsmen, and the respective heirs, be freed, absolved, and discharged of any further duty to the State of Iowa because of any collateral inheritance tax law affecting this estate; and for such other relief as to the court may seem meet and equitable in the premises."

A. M. DUUS,

Administrator.

G. T. STRUBLE,
NELSON MILLER,

Attorneys for the Administrator.

The above report was duly sworn to by the administrator.

And on January 23rd, 1914, the Treasurer of the State of Iowa, after being duly served with notice of the filing and hearing of the above report, filed the following

Objections to Report of Administrator.

Comes now W. C. Brown, treasurer of the state of Iowa, and Q. A. Willis, deputy treasurer of the state of Iowa, and state to the court in objection to the report of the administrator of the above named estate, A. M. Duus, and in answer to the same that John Peterson, the decedent, died a resident of Plymouth County, Iowa, and at that time of his death he left no father, mother, lineal descendant, adopted child, or lineal descendant of an adopted child as his heir, devisee, or legatee and that none of the property of his estate passes by devise, bequest or inheritance to such a person. That the entire estate of decedent exceeds the sum of One Thousand Dollars after deducting the debts of said estate and that said estate has been reported and listed by the administrator thereof as subject to a collateral inheritance tax. That said decedent left property of the appraised value of \$14,186.42 and that the same passes by inheritance to the following named heirs in the following amounts respectively: Ernst Emil Nelson one-fourth and subject to an inheritance tax of five per cent thereof, Ingeborg Elise Carlson, a niece and not a citizen of the United States, Ida Wilhelminna Soderberg Eklund, a niece and an alien and a resident and citizen of Sweden one-fourth of said estate, Annette Kristina Peterson Olsson Warnlund, a widow of a nephew and an alien and a resident and a citizen of Sweden one-twelfth of said estate, Elsa Siri Maria Olsson Warnlund, a child of a nephew and an alien and a resident and a citizen of Sweden one-eighteenth of said estate. Nils Gustaf Wilhelm Olsson Warnlund, a child of a nephew and an alien and a resident and a citizen of Sweden one-eighteenth of said estate, Ivan Einar Edvard Olsson Warnlund, a child of a nephew and an alien and a resident and a citizen of Sweden one-eighteenth of said estate. That the said objector and answerer does not know as

9 to the residence or citizenship of Ingeborg Elise Carlson and therefore denies that she is a citizen of this country and a resident of the United States. That the share of this last named heir and the other last above named heirs alleged to be non-resident aliens of and to the United States is subject to a collateral inheritance tax of twenty per centum of the amount of their respective shares. That drafts for the amount stated in the final report have been tendered the treasurer of the state of Iowa but that said drafts are not in the amount of the sum due respectively. That there is a treaty now existing between the United States and Sweden but that this treaty does in no way provide for nor effect in any way collateral inheritances nor the amount due the state as a collateral inheritance in the above named estate. Further it is alleged that said report and the amounts set forth therein as stated by the said A. M. Duus ad-

ministrator is not a correct and true and legal accounting of the sums due from said estate.

Wherefore the said petitioner asks that this report be not approved and that said administrator be not discharged and that the heirs and the said administrator be not released from their personal liability for said tax and that the property of said estate be not released from the lien of the collateral inheritance claim in favor of the state of Iowa and the charge thereof.

CLARENCE D. ROSEBERRY,
County Attorney for Plymouth County, Iowa.

And thereafter when the said report and the objections thereto came on for hearing the following stipulation was entered into and filed in the case:

10 *Stipulation.*

It is hereby stipulated by and between the administrator of the above named estate and the Treasurer of the State of Iowa, that Ingeborg Elise Carlson is a resident and citizen of the United States and the court may consider this case, that of the amount of collateral inheritance tax for which the estate is liable and being between the said estate and the State Treasurer as if the denial of that fact had not been made by the said Treasurer, and it is further stipulated that the report filed by the administrator is correct excepting that the Treasurer claims twenty per cent instead of five per cent collateral inheritance tax, upon property passing to Alien non-residents.

This stipulation shall be filed in the matter of the hearing of the report of A. M. Duus in which he asks for relief from further payments as collateral inheritance tax excepting such sums as have been tendered.

W. C. BROWN,
Treasurer of State,
By Q. A. WILLIS, *Deputy.*
NELSON MILLER,
Attorney for the Administrator.

And thereafter the matter of the approval or disapproval of the said report was argued before the court, and on the 10th day of February, A. D. 1914, the court made and entered of record the following final

Order, Judgment, and Decree in Probate.

11 "And now, to wit, on this 10th day of February, 1914, the hearing of the report of A. M. Duus, administrator of the estate of John Peterson, deceased, which report was filed on January 10th, 1914, came on for hearing before the court sitting as a court of probate, and it appearing that the matter upon which the action of the court is sought is purely a matter of law with

no issues of fact involved, and after hearing the arguments of counsel, and the court being fully advised in the premises, the court is of opinion that the section of the treaty set out in the administrator's report in no way obligates the State of Iowa to tax and charge the non-resident Aliens any less collateral inheritance tax than is provided for in section 1467 of the Iowa "Supplement to the Code, 1907," and that the said section of the treaty named, in no way changes, modifies, or controls the rate of taxation for which non-resident Aliens and their inheritances, are liable under the section of the Code Supplement named, and the said report is therefore disapproved, and the prayer thereof is refused, to all of which the administrator and the heirs except."

WM. HUTCHINSON, *Judge.*

Appeal.

On the 17th day of February, A. D. 1914, the administrator and the heirs took their appeal from the above order, judgment and decree, to the Supreme Court of the state by serving written notice of such appeal upon the attorneys of record for the said W. C. Brown, Treasurer of State, and upon the Clerk of the District Court of Plymouth County, Iowa, and filing said notice together with proof of service of the same, in the office of the Clerk of said court.

Certificate.

12 The appellant certifies that the foregoing abstract is a full, true, complete, and correct abstract of the report filed and the objections thereto, and of all the evidence, pleadings, records, ruling and proceedings in said cause.

NELSON MILLER,
Attorney for Appellants.

I hereby certify that the true and actual cost paid for printing the foregoing abstract is \$—.

NELSON MILLER,
Attorney for Appellants.

13

Filed Dec. 15, 1914.

In the Supreme Court of Iowa, September Term, 1914.

In the Matter of the Estate of JOHN PETERSON, Deceased.

In Probate.

Appeal from Plymouth County District Court.

Hon. Wm. Hutchinson, Judge.

Nelson Miller, Le Mars, Iowa, Attorney for the Heirs and Appellant.

G. T. Struble, Sioux City, Iowa, Attorney for the Administrator, of Counsel.

George Cosson, Des Moines, Iowa, Attorney General; C. A. Robins, Des Moines, Iowa, Assistant Attorney General; Clarence Roseberry, Le Mars, Iowa, County Attorney, Attorneys for Appellee.

Appellant's Amendment to Abstract and Reply Brief and Argument.

Service of the within Amendment to Abstract and Reply Brief and Argument is hereby accepted, and the receipt of a true copy acknowledged, and consent given to the filing of the same on this 15th day of Dec., 1914.

GEORGE COSSON, *Att'y Gen'l*
Attorney for Appellee.

14

Appellant's Amendment to Abstract of Record.

On January 14th, 1910, the duly appointed Collateral Inheritance Tax Appraisers of Plymouth County, filed their appraisal of the real estate and other property belonging to the estate of the deceased, which appraisal was as follows: Real Estate: N. $\frac{1}{2}$ of N. E. $\frac{1}{4}$ of Sec. 20, Twp. 93, range 44, 80 acres, appraised value, \$8,800.00.

Personal Property (Including all notes and accounts) appraised value, total, \$5,386.42.

Certificate.

I hereby certify that the above amendment to abstract is a true and correct abstract of the appraisal for collateral inheritance taxes, and of the value placed and fixed by the appraisal on the property of the estate of John Peterson, as the same appears in the record of this cause.

NELSON MILLER,
Attorney for Appellant.

Supreme Court of Iowa.

STATE OF IOWA, ss:

Be it remembered, That on the 16th day of December, A. D. 1914, the following proceedings, among others, were had in the Supreme Court of Iowa, to-wit:

Appeal from Plymouth District Court.

#29828.

In the Matter of the Estate of JOHN PETERSON, Deceased.

This cause is submitted on abstracts and arguments on file and oral argument of counsel for the appellant.

I hereby certify that the foregoing is a full, true and complete copy of the record entry of said Court in the above entitled cause, as full, true and complete as the same remains on file and of record in my office.

In testimony whereof, I have hereunto set my hand and affixed the seal of said Court, at Des Moines, this 13th day of Jan'y, A. D. 1916.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT, *Clerk*,
By J. V. ARNEY, *Deputy*.

16 Be it remembered That on the 22nd day of January, A. D. 1915, the following proceedings were had in the Supreme Court of Iowa, to-wit:

#29828.

In the Matter of the Estate of JOHN PETERSON, Deceased.

Appeal from Plymouth District Court.

In this cause, the Court being fully advised in the premises, file their written opinion affirming the judgment of the District Court.

It is therefore considered by the Court that the judgment of the Court below be and it is hereby affirmed, and that a writ of procedendo issue accordingly.

It is further considered by the Court that the appellant pay the costs of this appeal, taxed at \$— and that execution issue therefor.

I hereby certify that the foregoing is a full, true and complete copy of the judgment entry of said Court in the above entitled cause, as full, true and complete as the same remains on file and of record in my office.

In testimony whereof, I have hereunto subscribed my name and affixed the Seal of said Court this 13th day of Jan'y, A. D. 1916.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT,
Clerk Supreme Court,
By J. V. ARNEY, *Deputy.*

17

In the Supreme Court of Iowa.

(Filed January 22nd, 1915.)

816/29828.

In re Estate of JOHN PETERSON, Deceased.

Appeal from Plymouth County District Court.

Hon. Wm. Hutchinson, Judge.

Appeal from an order subjecting the estate of John Peterson, deceased, to the payment of an inheritance tax. Decedent's heirs appeal.

Nelson Miller (G. T. Struble, of counsel), for Appellants.

George Cosson, Attorney General, C. A. Robbins, Assistant Attorney General, and Clarence D. Roseberry, for Appellee.

DEEMER, J.:

John Peterson, a native of Sweden, but a naturalized citizen of the United States, died intestate in Plymouth County, Iowa, on March 13, 1909, unmarried, and without any direct heirs. His heirs were nephews and nieces, or their surviving spouses or children, who took from one-fourth to one-eighteenth of his estate. One nephew and one niece are naturalized citizens living in the states of Illinois and Wisconsin respectively. The other heirs are non-resident aliens, living in Sweden. The estate consisted of eighty acres of land, appraised at \$8,800.00, and personal property valued at \$5,386.42. The administrator of the estate tendered to the State Treasurer the sum of \$848.95 in full of the collateral inheritance tax due to the State, being five per centum of the valuation of the property with interest, which the Treasurer refused to receive, claiming that under the law the estate passing to non-resident aliens was subject to a 20 per centum tax.

Conceding that the law of this State in force at the time of testator's death, and at the time of the hearing in the District Court, exacted a 20% tax upon property passing to collateral heirs who were non-resident aliens, counsel for these heirs, and for the administrator, insist that this law was and is invalid because of a treaty between the United States and the Kingdom of Sweden first

18 concluded in the year 1793 between the property authorities of the two governments, and afterward revived first in the year 1816, and again in 1827. As the treaty now stands reads as follows:

Article I (in part): The citizens and subjects of each of the two high contracting parties may, with all security for their persons, vessels, and cargoes, freely enter the ports, places and rivers of the territories of the other, wherever foreign commerce is permitted. They shall be at liberty to sojourn and reside in all parts whatsoever of said territory; to rent and occupy houses and warehouses for their commerce; and they shall enjoy generally, the most entire security and protection in their mercantile transactions, on condition of their submitting to the laws and ordinances of the respective countries. Swedish and Norwegian vessels, * * * shall be treated * * * upon the same footing as national vessels * * * with respect to the duties of tonnage, lighthouses, pilotage, and port charges, as well as to the perquisites of public officers, and all other duties or charges of whatsoever kind or denomination, levied in the name, or to the profit, of the government, the local authorities, or of any private establishment whatsoever.

"Article III. The subjects of the King of Sweden shall not pay in the ports, havens, roads, countries, islands, cities and towns, of the United States, or in any of them any other or greater duties or imposts, of what nature soever they may be, than those which the most favored nations are or shall be obliged to pay and they shall enjoy all the rights, liberties, privileges, immunities and exemptions in trade, navigation, and commerce which the said nations do or shall enjoy. * * *

"Article VI. The subjects of the contracting parties in the respective states may freely dispose of their goods and effects either by testament, donation or otherwise in favor of such persons as they think proper; and their heirs in whatever place they shall reside, shall receive the succession even ab intestato either in person or by their attorney without having occasion to take out letters of 19 naturalization. These inheritances as well as the capitals and effects, which the subjects of the two parties in changing their dwelling, shall be desirous of removing from the place of their abode shall be exempted from all duty, called 'droit de detraction' on the part of the government of the two states, respectively. But it is at the same time agreed that nothing contained in this article shall in any manner derogate from the ordinances published in Sweden against emigration or which may hereafter be published, which shall remain in full force and vigor. The United States on their part or any of them, shall be at liberty to make, respecting this matter, such laws as they think proper."

The sixth article of this treaty is the one relied upon by appellants. Appellant's counsel seem to concede that the entire estate is subject to the five per centum tax imposed generally upon all collateral inheritances; but they argue that anything in excess of that is contrary to both the letter and the spirit of the treaty. On the other hand, it is contended that the treaty does not apply to real

estate in any event, and that there is no provision therein which deprives the State of its power to collect inheritance taxes upon property within its borders, and nothing either in the treaty or in either the Federal or State Constitution which inhibits the imposition of a greater tax where the property passes to non-resident aliens from that imposed where it passes to either resident citizens or aliens.

Some of the propositions involved are not the subject of debate. It is conceded that the State has plenary power over the descent or succession of property within its borders, save as such right may be limited by some constitutional or treaty provision; that an inheritance tax is not fundamentally a tax upon property, but upon the right of succession or the right to receive property by will or descent; and that there is no provision, unless it be found in the treaty, requiring inheritance taxes to be uniform. In other words, it is practically agreed that our inheritance tax law is valid unless when properly construed it be found to conflict with the treaty rights and obligations. We may here pause long enough to dispose of one of the contentions made for the State, to the effect that real estate passing either by will or descent, is not covered by the provisions of the treaty relating to "goods and effects." It may be conceded that, generally speaking, these terms are not broad enough to cover real estate; but they may be and often are construed to include real estate. They have often been so construed when found in treaties.

See cases cited in *In re Anderson*, 147 N. W. 1098.

A different interpretation seems to have been placed upon them in *Meier vs. Lee*, 106 Iowa, 303, but the case seems to be treated as one of first impression and little attention was given the authorities upon the proposition. The matter is fully and exhaustively covered in *Adams vs. Akerland*, 48 N. E. (Ill.) 454, with the result that real estate was held to be included within the terms of the treaty. As shown in that case this treaty, like all the early ones, was written in French and the French terms for goods and effects include all kinds of property, both real and personal.

Story on Conflict of Laws, 8th Ed., 13, Note 1.

II. The fundamental question here is, Does the treaty deprive the State of its right to impose what are known as inheritance taxes where the property within its borders passes to collateral heirs, or does it require that such taxes, if imposed, be uniform, that is, at the same ratio upon alien and citizen alike, or upon residents and non-residents in equal proportions? Appellants do not contend that the State has no right under this treaty to impose any inheritance tax, but rather that it has no right to impose one tax upon the property passing to residents and another and higher tax upon non-resident aliens; asserting in this connection that the difference in rate is in effect a *droit de detraction*, or duty of detraction, and for that reason prohibited by the treaty. This right of detraction seems to have acquired a well established meaning in international law. As we understand it is a tax levied upon the removal from one state or

country to another of property acquired by succession or testamentary disposition, and it does not cover taxes upon the succession to or transfer of property.

Frederickson vs. Louisiana, 23 How. (U. S.) 445.
In re Strobel's Estate, 39 N. Y. Supp. 169.

21 The sentence in Article VI of the treaty quoted, beginning with the words "these inheritances" clearly has reference to removal taxes or duties, or, as they are called in the language of diplomacy, "droit de detraction," and not to succession or inheritance taxes. If there be anything in the treaty which forbids the levy of inheritance or succession taxes by the State, it is found in the first sentence of Article VI, which provides for the free disposition by will, gift or otherwise, by the subjects of the contracting parties in the respective States, in favor of such persons as they think proper; and that their heirs, no matter where resident, may receive the succession without taking out letters of naturalization. The words "ab intestato" mean from an intestate. If this provision is to be given the effect contended for, it would relieve the property of a subject of this country dying intestate, of all collateral or other inheritance taxes, provided his heirs are subjects of the Kingdom of Sweden, no matter where their residence.

Another possible construction of this treaty is that it applies only to a subject of one of the contracting parties resident in the territory of the other. If that be the proper interpretation, then it does not apply to this controversy for the reason that deceased was a naturalized citizen of this country when he died, and but for the first clause of the initial paragraph of Article VI of the treaty a state inheritance or succession tax would be perfectly lawful. Treating the first paragraph as relating to subjects of either country residing at home, it is manifest that there is nothing therein which forbids the levy of inheritance or succession taxes, when the property passes ab intestato to the heirs of such subject, no matter whether they be residents or non-residents, aliens or subjects. The term "freely dispose of" does not, as we view it, relate to property passing by descent. Such property is covered by the next sentence of the

22 treaty, and in that there is no reference whatever to any taxes or duties. The only language with reference to property acquired by descent is found in the next sentence, relating to the duty called droit de detraction, and as we have seen, that does not cover succession or inheritance taxes.

Were we to give the treaty the broad significance claimed for it, it would give to subjects of the Kingdom of Sweden, whether residents or non-residents of this country, greater rights in the property of an intestate than are possessed by our own citizens; for no succession or inheritance taxes could be imposed upon any property passing to them ab intestato. There is, as we see it, no middle ground. Either property passing to non-resident Swedish aliens by descent or through inheritance is subject to a valid succession tax, or it is not; and the amount of the tax is not the criterion by which to determine the validity thereof. Appellant's counsel practically

concede that the property was subject to a five per centum tax notwithstanding the treaty, and, as we understand it, claim that all in excess of the five per centum is a duty of detraction inhibited by the clause of the treaty now being considered. As already stated we do not regard this tax as a droit de detraction. It is not imposed upon the removal of the property, but upon the right to take or receive the same by descent or inheritance. Indeed it is not in a strict sense a tax upon property at all. The tax is imposed before it reaches the heir or devisee, as the case may be, and the property passes after it has suffered a diminution to the amount of the tax; the portion exacted as a tax never reaches the person taking the state. Such is the uniform holding of the cases.

Lacey vs. State Treas., 121 N. W. 179.

In re Anderson, 147 N. W. 1098.

Herriott vs. Bacon, 110 Iowa, 342.

Knowlton vs. Moore, 178 U. S. 55.

U. S. vs. Perkins, 163 U. S. 625.

Scholey vs. Reid, 23 Wall (U. S.) 331.

Ferry vs. Campbell, 110 Iowa, 290.

In re Stone, 132 Iowa, 136.

23 Such being its nature, there is no constitutional requirement that such taxes be uniform, or, in the absence of a treaty, that they be the same when the property passes to aliens as when it descends to citizens. The tax may be progressive in character and discriminatory in the sense that it may be collected from property passing to collateral heirs alone, property passing to direct heirs being entirely exempt or subject to a much less rate.

Rodman vs. Kentucky, 113 S. W. 61.

In re Benton, 84 N. E. 1026.

Union Trust Co. vs. Wayne, 84 N. W. 1101.

In re McPherson, 10 N. E. 685.

Nunnemacher vs. State, 108 N. W. 627 (Wis.) 9 Ann.

Cases 121.

State vs. Vinsonhaler, 105 N. W. 472.

In re Wilmerding, 49 Pac. (Cal.) 181.

Magoun vs. Illinois Co., 170 U. S. 283.

Minot vs. Winthrop, 38 N. E. (Mass.) 512.

In re Johnson, 73 Pac. (Cal.) 424.

Mager vs. Grima, 8 How. 493.

Wunderle vs. Wunderle, 19 L. R. A. 84.

Blythe vs. Hinkley, 180 U. S. 333.

Is there anything in the treaty in question which requires uniformity of this tax upon property passing to citizens of this country and to citizens of and subjects of the Kingdom of Sweden?

The Supreme Court of Washington in a learned opinion by Parker, J., thought there was, although two of the Justices dissented.

See In re Stixrud, 109 Pac. 343.

The doctrine of this opinion seems to be that the treaty guaranteed equality between citizens and aliens, and that the testamentary and inheritance rights secured thereby were such that they could not be impaired except as such rights and privileges of citizens might be impaired by the laws of their own country. No cases were cited which directly supported this proposition. On the contrary in each of the cases relied upon in support of the rule there was an express provision that alien heirs might succeed to
 24 and take possession of property passing by succession or by will, and dispose of the same, paying such duties only as the inhabitants of the country wherein the goods may be shall be subject to pay in like cases.

Frederickson vs. Louisiana, 23 How. (U. S.) 445.

Schultze vs. Schultze, 33 N. E. 201.

In re Sala, 24 So. 674.

Rixmer's Succession, 19 So. 597.

To the contrary of the holding of the Supreme Court of Washington is *In re Strobel's Estate*, 39 N. Y. Supp. 169. See also,

In re Anderson's Estate, supra.

In the Washington case the treaty was construed as if it contained a clause usual to such conventions, "that in all successions to inheritances citizens of each of the contracting parties shall pay in the country of the other such duties only as they would be liable to pay if they were citizens of the country in which the property is situated, or the judicial administration of the same may be exercised." We find no warrant for such assumption.

Doubtless no reference to succession or inheritance taxes was made because such were unknown to this country at the time the original treaty was negotiated, and although such taxes had become quite general either in Europe or in England when the treaty was last made, there was no change in its phraseology, and the matter was left open to State action. In the recent case of *McKeown vs. Brown*, 149 N. W. 593, which involved the treaty between this country and Great Britain, it was held that as the treaty expressly covered succession and inheritance taxes, and provided that no more should be exacted from subjects of Great Britain than from citizens or subjects of this County, the twenty per centum tax imposed by our statute on property passing to non-resident aliens, was invalid; at least to the extent of the excess over five per centum assessed on property passing to citizens and subjects to this country. The most
 25 favored nation clause in the treaty now before us is not relied upon, and it is manifest that it does not apply to succession or inheritance taxes.

Finding nothing in the treaty under consideration which exempts property within this jurisdiction passing to collateral heirs, be they citizens or aliens, from the collateral inheritance tax, and nothing providing for or guaranteeing uniformity therein, nothing to the effect that they shall be the same upon property passing to collateral heirs without regard to their citizenship, we are con-trained

to hold that there is nothing in our law in conflict with any of the treaty rights guaranteed to the citizens or subjects of the Kingdom of Sweden residing therein.

This is the pivotal point in the case, and although the conclusion is in conflict with the learned opinion of the Washington Supreme Court hitherto mentioned, we are not convinced of the soundness of his conclusion, and, although we have read and reread that opinion, it is obvious that the conclusion reached is a strained one, due largely to the thought that the treaty was perhaps intended to and doubtless should have been so made as to exempt property passing to non-resident aliens, no matter of what nationality, from every sort of succession or inheritance taxes, save such as were levied upon and collected from property passing to citizens and subjects of this country. We would be glad to come to this conclusion were we able to find language which would justify it, but after a careful study of the document we are forced to the conclusion that this treaty absolutely prohibits the levy of any succession or inheritance taxes upon property passing to collateral heirs, citizens and subjects of the Kingdom of Sweden, or that it contains no limitations whatever. As said in the beginning, there is, to our minds, no middle ground. No one contends that it absolutely inhibits all succession taxes, and we find no warrant for saying that it permits the levy of such taxes, but only to the extent that they may be levied upon property passing to citizens and subjects of this country, or, perhaps, to citizens and subjects residing abroad.

The distinction between this case, which is in many respects similar to *In re Anderson*, supra, and *McKeown vs. Brown*, supra, 26 is apparent.

The trial court was right in holding that the property was subject to the tax demanded by the State Treasurer, and its order and judgment must be, and they are, affirmed.

Ladd, Preston, Weaver, Salinger, and Gaynor J. J. concurring.

27 & 28 In the Supreme Court of Iowa.

No. —.

In the Matter of the Estate of JOHN PETERSON, Deceased.

A. M. DUUS, Administrator, Plaintiff in Error,

vs.

W. C. BROWN, Treasurer of State, Defendant in Error.

Petition for Writ of Error.

Considering himself and the estate which he represents aggrieved by the final decision of the Supreme Court of Iowa in affirming the judgment of the lower court in the matter above entitled and thereby holding the administrator and the estate liable for a col-

lateral inheritance tax on the inheritance of non resident Swedish Aliens greater than that upon citizens, notwithstanding the provisions of the treaty between the United States and Government of Sweden; plaintiff in error hereby prays a Writ of Error therefrom to the Supreme Court of the United States; an order fixing the amount of the supersedeas bond; and for such other orders and processes as may be necessary to secure a review thereof in said court.

A. M. DUUS, *Adm.*,
Plaintiff in Error,
 By NELSON MILLER,
His Attorney.

Upon consideration whereof, the within petition is granted, and it is ordered that a writ of error, as prayed, be and is hereby allowed; and shall issue upon the petitioner giving bond, with appropriate conditions as by law provided, in the sum of one thousand Dollars, which bond when approved shall operate as a supersedeas.

Dated this 13th day of Jan. 1916.

W. D. EVANS,
Chief Justice of the Supreme Court of Iowa.

29 & 30

In the Supreme Court of Iowa.

No. —.

In the Matter of the Estate of JOHN PETERSON, Deceased.

A. M. DUUS, Administrator, Plaintiff in Error,

vs.

W. C. BROWN, Treasurer of State, Defendant in Error.

Assignment of Errors.

And now, on this 12th day of Jan. 1916, comes A. M. Duus, Administrator of the above estate, and plaintiff in error, and says that the order and judgment affirming the lower court, which was entered by the Supreme Court of Iowa on the 22nd day of January 1915, is erroneous and not according to law in the following particulars, namely:

First. The Sixth Article of the treaty of 1783 between the United States and Sweden, which was revived and incorporated into the treaty of 1827 between the same countries, and in force at the time of decedent's death, prohibits the imposition of a greater or higher collateral inheritance tax upon the inheritances of heirs who are non resident Swedish Aliens, than that which is imposed upon the inheritances of heirs who are citizens of the United States, and the said order and judgment does not give effect thereto, and thereby denied a right claimed in the court below.

Second. The collateral inheritance tax of twenty per cent imposed upon the inheritances of non resident Alien heirs of a de-

ceased person by section 1467 of the 1907 Supplement to the Code of Iowa, so far and to the extent that it imposes greater and higher duties upon non resident Aliens heirs than upon citizens heirs, is a droit de detraction tax within the meaning of the Sixth Article of the treaty above referred to, and therefor to that extent invalid against non resident Swedish Aliens, and the said order of affirmance does not give effect to that immunity though claimed in the court below.

A. M. DUUS, *Adm.*,
By NELSON MILLER,
His Att'y.

The above assignment of errors was presented to me with the petition for a writ of error, and the Clerk of the Supreme Court of Iowa is directed to file the same as one of the papers in the proceeding to procure a writ of error.

Dated this 13th day of Jan. 1916.

W. D. EVANS,
Chief Justice of the Supreme Court of Iowa.

31

Writ of Error.

UNITED STATES OF AMERICA, *ss.*:

The President of the United States of America to the Honorable Justices of the Supreme Court of Iowa, Greeting:

Because, in the record and proceedings, as also in the rendition of the judgment of a plea, which is in the said Supreme Court of Iowa before you, being the highest court of law or equity of the said State in which a decision could be had in said cause, being the Matter of the Estate of John Peterson, Deceased, in which A. M. Duus, administrator, is plaintiff in error, and W. C. Brown, Treasurer of State, defendant in error, wherein was drawn in question the construction o' a treaty of the United States and the decision was against the privileges and immunities and exemptions specially set up and claimed under the said treaty, and wherein was drawn in question the validity of a statute of the State of Iowa and an authority exercised thereunder, on the ground of their being repugnant to the Constitution and a treaty of the United States, and the decision was in favor of the validity of such statute and authority, a manifest error hath happened, to the great damage of the said A. M. Duus, Administrator, as by his complaint appears.

We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the Supreme Court of the United States, together with this writ, so that you have the same at Washington, D. C. within thirty days after the date of signing the citation therein, in the said Supreme Court, that

the record and proceedings aforesaid being inspected, the Supreme Court may cause further to be done therein to correct that error, what of right, and according to the laws and customs of the United States, should be done.

Witness, The Honorable Edward D. White, Chief Justice of the Supreme Court of the United States, and the seal of the District Court of the United States for the Southern District of Iowa.

32 & 33 Issued at office in Des Moines, Iowa, this 13th day of January A. D. 1916.

[Seal U. S. District Court, District of Iowa.]

W. C. McARTHUR,
*Clerk United States District Court,
Southern District of Iowa.*

Allowed by
W. D. EVANS,
Chief Justice of Iowa.

January 13, 1916.

UNITED STATES OF AMERICA,
State of Iowa, ss:

Clerk's Return on Writ of Error.

In obedience to the command of the within Writ, I herewith transmit to the United States Supreme Court, Washington, D. C. a duly certified transcript of the record and proceedings in the within entitled cause, with all things concerning the same.

In Witness Whereof, I hereto subscribe my name and affix the seal of the Supreme Court of the State of Iowa, at office in the City of Des Moines this — day of — A. D. 1916.

Clerk Supreme Court, State of Iowa.

34 & 35 In the Supreme Court of Iowa.

No. —.

In the Matter of the Estate of JOHN PETERSON, Deceased.

A. M. DUUS, Administrator, Plaintiff in Error,

vs.

W. C. BROWN, Treasurer of State, Defendant in Error.

Prayer for Reversal.

To the Honorable the Supreme Court of the United States:

Now comes A. M. Duus, Administrator and plaintiff in error in the matter above entitled, and says that, having heretofore filed his

petition for a writ of error together with an assignment of errors with the Chief Justice of the Supreme Court of Iowa, and the same having been duly allowed, and being herewith lodged with the Clerk of the Supreme Court of Iowa, the plaintiff in error prays that, because of the errors assigned, the order and judgment of the Supreme Court of Iowa heretofore entered in the matter above entitled, be reversed, and judgment given against the defendant in error for costs, and that the Supreme Court of Iowa may be ordered, adjudged and commanded to enter an order and judgment reversing the District Court and commanding it to approve the Administrator's report filed in the District Court and to grant the relief in said report prayed for by the administrator, and that the cause be remanded to the Supreme Court of Iowa for the proper proceedings in the premises.

A. M. DUUS,
Plaintiff in Error,
 By NELSON MILLER,
His Attorney.

Let a writ of error issue upon the execution of a bond in the sum of \$1,000 Dollars, conditioned as required by law, and when approved to operate as a supersedeas.

Dated Jan. 13, 1916.

W. D. EVANS,
Chief Justice of the Supreme Court of Iowa.

36 & 37 THE UNITED STATES OF AMERICA:

Citation.

In the Matter of the Estate of JOHN PETERSON, Deceased.

The President of the United States to W. C. Brown, Treasurer of the State of Iowa, Greeting:

You are hereby cited and admonished to be and appear at and before the Supreme Court of the United States, at Washington, D. C., within thirty days from the date hereof, pursuant to a Writ of Error filed in the office of the Clerk of the Supreme Court of the State of Iowa, in the Matter of the Estate of John Peterson, Deceased, and wherein A. M. Duus, Administrator, is plaintiff in error, and you are defendant in error, to show cause, if any there be, why the judgment rendered against the said plaintiff in error as in said writ of error mentioned, should not be corrected and speedy justice done the parties in that behalf.

Witness, the Chief Justice of the Supreme Court of Iowa, this 13 day of January 1916.

W. D. EVANS,
Chief Justice of the Supreme Court of Iowa.

Attest.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT,
Clerk Supreme Court of Iowa.

Acceptance of Service.

I, W. C. Brown, Treasurer of State of Iowa, hereby accept and acknowledge due and legal service of the above citation on this 13th day of January 1916, and acknowledge the receipt of a true copy thereof.

W. C. BROWN,
Treasurer of State of Iowa,
 By Q. A. WILLIS, *Deputy.*
 GEORGE COSSON, *Att'y Gen'l.*
 C. A. ROBBINS,
Ass't Att'y Gen'l.

The Clerk will please enter the appearance of the undersigned as counsel for the Defendant in Error.

GEORGE COSSON, *Att'y Gen'l.*
 C. A. ROBBINS,
Ass't Att'y Gen'l.

38

In the Supreme Court of Iowa.

In the Matter of the Estate of JOHN PETERSON, Deceased.

A. M. DUUS, Administrator. Plaintiff in Error,

VS.

W. C. BROWN, Treasurer of State, Defendant in Error.

Bond.

Know all Men by These Presents: That I, A. M. Duus, Administrator, as principal, and American Surety Co. of New York as sureties, are held and firmly bound unto W. C. Brown, Treasurer of the State of Iowa, in the sum of One Thousand Dollars, for the payment of which well and truly to be made, we bind ourselves jointly and severally.

The condition of this obligation is such, that, Whereas the above named plaintiff in error seeks to prosecute his writ of error to the United States Supreme Court, to reverse the judgment rendered in the above named action by the Supreme Court of Iowa,

Now, Therefore, if the above named plaintiff in error shall prosecute his said writ of error to effect, and shall pay all costs that have or may be adjudged against him, and if he shall satisfy and perform the judgment of the court now or hereafter in said cause rendered against him in case he shall fail to make good his plea, then this obligation to be void, otherwise in full force and effect.

Dated this 11th day of Jan'y, 1916.

AMERICAN SURETY COMPANY OF
 NEW YORK.

A. M. DUUS, *Plaintiff.*

By F. H. NOBLE, *Resident Vice President.*

Attest:

[SEAL.]

W. W. BOYCE,

Resident Assistant Secretary.

The above bond is hereby approved, to operate as a Supersedeas, this 12th day of January, 1916.

W. D. EVANS,
Chief Justice of Supreme Court of Iowa.

39

Authentication of Record.

SUPREME COURT,
State of Iowa, ss:

I, B. W. Garrett, clerk of the above named court, do hereby certify that the above and foregoing is a true, full and complete transcript of the record and proceedings in the cause numbered in said court 29828, and entitled In re Matter of the Estate of John Peterson, Deceased, (A. M. Duus, Adm. vs. W. C. Brown, Treasurer of State), and also of the opinion of the court rendered therein.

In testimony whereof I have hereunto set my hand, and affixed the seal of said court at my office in Des Moines, Iowa, on this 13th day of January A. D. 1916.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT,
Clerk Supreme Court of Iowa.

Return to Writ of Error.

UNITED STATES OF AMERICA,
Supreme Court of Iowa, ss:

In obedience to the within writ, I herewith transmit to the Supreme Court of the United States, a duly certified transcript of the complete record and proceedings in the within entitled case, with all things concerning the same, as thereto required by the stipulation of the attorneys, filed in the cause.

In witness whereof, I hereunto subscribe my name and affix the seal of the Supreme Court of Iowa, in the City of Des Moines, this 13th day of January A. D. 1916.

[Seal of the Supreme Court of Iowa.]

B. W. GARRETT,
Clerk Supreme Court of Iowa.

Plaintiff's costs \$3.30 paid by Attorney for Plaintiff in Error.
Defendant's Costs \$— paid by —.
Costs of transcript \$— paid by —.

39½

In the Supreme Court of Iowa.

In the Matter of the Estate of JOHN PETERSON, Deceased.

A. M. Dunn, Administrator, Plaintiff in Error,
vs.

W. C. BROWN, Treasurer of State, Defendant in Error.

Certificate of Lodgment.

SUPREME COURT,
State of Iowa, ss:

I, B. W. Garrett, Clerk of the Supreme Court of Iowa, do hereby certify that on January 13, 1916, there was lodged with me as such clerk, in the cause above entitled, the originals of the following papers, which originals are transmitted herewith as a part of the transcript in said cause, namely: the Writ of Error, the Petition for the writ, the Assignment of Error, and the Prayer for Reversal, together with the several orders allowing said instruments and the original citation, with acceptance of service.

I further certify that on said date there was lodged with me the original Bond, with the order approving the same, and the original Stipulation as to Transcript, true copies of which bond, order approving the same, and stipulation as to transcript, are herewith transmitted as a part of said transcript.

I further certify that on said date there was lodged with me copies of papers as follows, viz:

1. Two copies of the Writ of Error, one for the defendant, and one to file in this office.

2. One copy of each of the following papers, viz: Petition for Writ of Error, Assignment of Errors, and Prayer for Reversal, with copies of the several orders allowing them.

3. One copy of the Citation, with acceptance of service.

In testimony whereof, I have hereunto set my hand and affixed the seal of the court at my office at Des Moines, Iowa, on this 13th day of Jan'y, A. D. 1916.

B. W. GARRETT,
Clerk of the Supreme Court of Iowa.

Endorsed on cover: File No. 25,092. Iowa Supreme Court. Term No. 351. A. M. Duus, administrator of the estate of John Peterson, deceased, plaintiff in error, vs. W. C. Brown, treasurer of the State of Iowa. Filed January 19th, 1916. File No. 25,092.

77

U.S. SUPREME COURT, U. S.
FILED
DEC 11 1916
CLERK

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No.  **85**

**A. M. DUUS, ADMINISTRATOR OF THE ESTATE OF JOHN
PETERSON, DECEASED, PLAINTIFF IN ERROR,**

vs.

W. C. BROWN, TREASURER OF THE STATE OF IOWA.

IN ERROR TO THE SUPREME COURT OF THE STATE OF IOWA.

NELSON MILLER,

LeMars, Iowa,

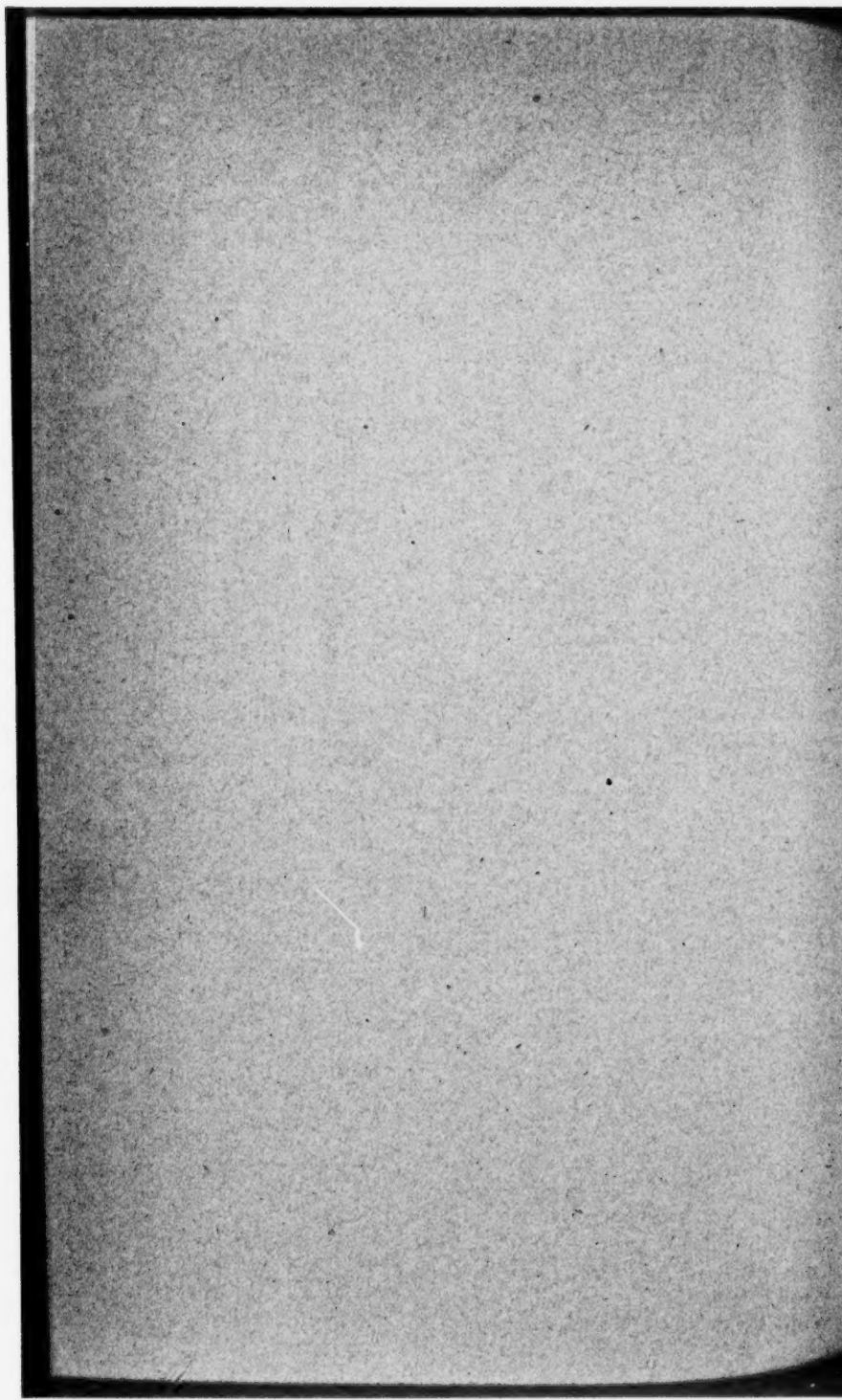
Attorney for Plaintiff in Error.

G. T. STRUBLE, of Counsel.

PROOF OF SERVICE.

I hereby accept and acknowledge due and legal service of
the within Brief and Argument, and acknowledge the receipt
of a true copy thereof, on this day of A. D.
1916.

Attorney for Defendant in Error.



In the Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 351.

A. M. Duus, Administrator of the Estate of John Peterson, Deceased, Plaintiff in Error,

vs.

W. C. Brown, Treasurer of State, Defendant in Error.

INDEX.

	Page.
Statement of the Case	1
Iowa Collateral Inheritance Tax Law	2
Section 1467 (1907 Supplement to the Code)	2
Article VI of Swedish Treaty	3
Article II of Swedish Treaty	3
Specification of Errors	5
Introduction	5
Brief of the Argument	6
Argument	9
Conclusion	25

LIST OF CASES.

Anderson's Estate, In Re	Cited on pp.	7
Bertram vs. Robertson		17
Brown vs. Daly		19
Campagne Francaise, etc. vs. Bd. of Health		17
De Geoffry vs. Riggs	7, 15, 16, 23, 21	
Frederickson vs. Louisiana	6, 9, 10, 11, 12, 17	
Hauenstein vs. Lynham		7
Knowlton vs. Moore	7, 16, 21, 22	
Ladd vs. Ladd		16
Marshalltown vs. Blum		8
Mager vs. Grima		12
Pacific Junction vs. Dyer		8
Stixrud's Estate, In Re	5, 7, 9, 17, 26	
Strobel's Estate, In Re	6, 9, 10, 11, 20	
State vs. O. & C. B. Ry. Co.		8
Sanchez vs. United States		17
United States vs. Perkins	21, 22	
Widenhus Case		17
Whitney vs. Robertson		17
<i>Church of Holy Trinity vs U.S.</i>		9



In the Supreme Court of the United States.

OCTOBER TERM, 1916.

No. 351.

IN THE MATTER OF THE ESTATE OF JOHN PETERSON,
DECEASED.

A. M. DUUS, ADMINISTRATOR, PLAINTIFF IN ERROR,

vs.

W. C. BROWN, TREASURER OF STATE, DEFENDANT IN
ERROR.

BRIEF AND ARGUMENT FOR PLAINTIFF IN ERROR.

Statement of the Case.

This case is a Writ or Error directed to the Supreme Court of the State of Iowa, to review its action in affirming a judgment of the District Court of Plymouth County, Iowa, holding that certain nonresident alien heirs of the deceased were liable to the payment of 20 per cent of the value of their inheritance to the State of Iowa, under the collateral inheritance tax law of that state. The said law discriminated against the alien heirs by taxing them 15 per cent more than it taxed resident heirs who were similarly related to the deceased. Such action was held permissible under the treaty of 1827 existing between the United States and the Kingdom of Sweden, that being the country in which the non-resident alien heirs resided and to which they were subject.

The case was a matter in probate. John Peterson, the deceased, died in Plymouth County, Iowa, on March 13th, 1909. He was a naturalized citizen of the United States. He died without leaving wife, father, mother, children, or adopted children, surviving him. The persons who inherit his estate are all collateral heirs, taking from one-eighteenth to one-fourth of the estate. Two of the heirs, Ernst Emil Nelson and Ingeborg Elise Carlson, are naturalized citizens of the United States, and live respectively in Illinois and Wisconsin. The rest of the heirs are nonresident aliens, they being residents and citizens of the Kingdom of Sweden in Europe.

The law of Iowa which was in force at the time of decedent's death, and under which the 20 per cent tax is claimed, as far as material to this case, is as follows:

"SECTION 1467. (1907 Supplement to the Code of Iowa) RATE. All property within the jurisdiction of this state, and any interest therein, whether belonging to the inhabitants of this state or not, and whether tangible or intangible, which shall pass by will or by the statutes of inheritance of this or any other state, or by deed, grant, sale or gift made or intended to take effect in possession or in enjoyment after the death of the grantor or donor, to any person in trust or otherwise, other than to or for the use of the father, mother, husband, wife, lineal descendant, adopted child, the lineal descendant of an adopted child of a decedent, step-child, or the lineal descendant of a step-child of a decedent, * * * within this state, shall be subject to a tax of five per cent of its value, * * * after the payment of all debts, for the use of the state; and all administrators, executors and trustees, and any such grantee under a conveyance and any such donee under a gift made during the grantor's or donor's life, shall be respectively liable for all such taxes to be paid by them, respectively, except as herein otherwise provided, with lawful interest as hereinafter set forth, until the same shall have been paid. The tax aforesaid shall be and remain a lien on such estate from the death of the decedent until paid. Whenever property, or any interest therein, shall pass to heirs, devisees, or other beneficiaries, as contemplated in the foregoing provisions, who are aliens, non-residents of the United States, the same shall be subject to a tax of twenty per centum (20%) of its true value, except where such foreign beneficiaries are brothers or sisters of the decedent owner, when the rate of tax to be assessed and collected therefrom shall be ten per centum (10%) of the value of the property or interest so passing."

SECTION 1475. (Code of 1897) PAYMENT TO THE STATE. All taxes imposed by this chapter shall be payable to the treasurer of state, and those which are made payable by executors, administrators or trustees shall be paid within fifteen months from the death of the testator or intestate, or within fifteen months from assuming of the trust by such trustee, unless a longer period is fixed by the court. All taxes not paid within the time prescribed by this act shall draw interest at the rate of eight per centum per annum until paid.

"SECTION 3061. (Code of 1897) OFFER IN WRITING. An offer in writing to pay a particular sum of

money, or to deliver a written instrument or specific personal property, if not accepted, is equivalent to the actual tender of the money, instrument or property, * * *."

Article VI of the treaty of 1783, which was incorporated into the treaty of 1827 by article XVII of the latter treaty, under which the heirs claim exemption, is as follows:

Article VI.

The subjects of the contracting parties in the respective states may *freely* dispose of their goods and effects, either by testament, donation, or otherwise, in favour of such persons as they think proper; and their heirs, in whatever place they shall reside, shall receive the succession even *ab intestato*, either in person or by their attorney, without having occasion to take out letters of naturalization. These inheritances, as well as the capitals and effects which the subjects of the two parties, in changing their dwelling, shall be desirous of removing from the place of their abode, shall be exempt from all duty called "*droit de detraction*" on the part of the Government of the two states, respectively. But it is at the same agreed that nothing contained in this article shall in any manner derogate from the ordinances published in Sweden against emigrations, or which may hereafter be published which shall remain in full force and vigor. The United States, on their part, or any of them, shall be at liberty to make, respecting this matter, such laws as they think proper. 8 Stat. St. at L. 60, 79.

Another article of the treaty of 1783 which was incorporated into the treaty of 1827 by article XVII thereof, throws some light upon the sense in which the word 'freely' was used. It is the second article of the treaty of 1783, and reads:

Article II.

The King and the United States engage mutually not to grant hereafter any particular favour to other nations in respect to commerce and navigation which shall not immediately become common to the other party, who shall enjoy the same favour *freely*, if the concession was *freely* made, or on allowing the same compensation, if the concession was conditional.

Other articles of the treaties having a bearing upon the meaning, are article I of the treaty of 1827. This article is set out on page 12 of the transcript, and therefore will not be

included here. Article III of the treaty of 1782 is also set out on page 12 of the transcript. The Iowa court in its opinion erroneously includes article III of the treaty of 1783 as a part of the treaty of 1827. That article was not made a part of the treaty of 1827, but article II was. See article XVII of the treaty of 1827 with Sweden, *Treaties and Conventions between the United States and Foreign Powers*, 1889, page 1064.

The action of the District Court below, which was affirmed on appeal by the State Supreme Court, was in refusing to approve a report of the administrator, A. M. Duus, in which he reported that he had tendered to the treasurer of state at Des Moines, on December 23rd, 1913, the gross sum of \$848.95, in seven separate payments, as and for the collateral inheritance tax due on the seven separate shares inherited from the deceased's estate, with interest to that date, and that the treasurer had refused to accept it. The administrator reported that the sum tendered was five per cent of the value of the property passing to the heirs, and interest thereon; and asked for an order approving his action and providing that the money tendered might be paid over to the clerk of the court to be paid to the State Treasurer upon his demand, and that the administrator and the heirs might then be relieved from any further duty to the State under the collateral inheritance tax laws of the State, and that the real estate belonging to the estate, might be freed, absolved, relieved and discharged of any lien imposed upon it by virtue of the said collateral inheritance tax laws of the State of Iowa.

To the relief thus asked, the Treasurer of State filed objections, claiming that the treaty upon which the administrator relied did not forbid the collection from the non-resident Swedish heirs of the 20 per cent tax provided for by section 1467 of the 1907 Supplement to the Code of Iowa. The Treasurer also denied certain averments of the report, but the questions of fact thus raised were settled by a stipulation of the parties filed in the case. Transcript p. 7.

The objections raised no question as to the value of the estate, or that the sums tendered did not total five per cent of the value of the estate with interest thereon as provided by statute, or that each tender was not five per cent, with interest, of the value of the respective shares inherited, nor was any question raised as to the tender itself. The sole question raised and later determined was, What was the effect to be given to Article VI of the treaty with Sweden above quoted, as pertaining to this estate.

The matter was submitted as a pure question of law, and the relief asked by the administrator and the heirs was denied. The court decided that article VI of the treaty in question did not prohibit the collection of the 20 per cent tax from the non-resident Swedish aliens who were heirs of the deceased. Transcript, page 7.

This judgment was affirmed by the Supreme Court of Iowa on appeal, and to its decision and judgment of affirmance, the Writ of Error is directed.

Specification of Errors.

The plaintiff in error avers that there is error in the judgment of the Supreme Court of Iowa, and in the judgment of the lower court, which the State Supreme Court on appeal affirmed, in that it is the true meaning and intent of Article VI of the treaty of 1783 between the United States and Sweden, which article was incorporated into the treaty of 1827 between the same countries, and was in force at the time of decedent's death, that property sold or inherited by the subjects and citizens of either country, and from the subjects and citizens of the other, should be taken free from discriminating taxes, duties or burdens of any kind which are not imposed upon grantees and heirs in the country of the grantor's or the deceased's residence. That this appears from Article VI in two particulars, namely:

First. From the first sentence in said article VI providing that, 'The subjects of the contracting parties may FREELY dispose of their goods and effects, either by testament, donation, or otherwise, in favor of such persons as they think proper; and their heirs in whatever place they shall reside, shall receive the succession even *ab intestato*, etc.,

Second. To levy a discriminating tax operating as does the Iowa collateral inheritance tax law, partakes of the inherent nature of, and to all intents and purposes is a '*droit de deduction*' tax, which is forbidden by the second sentence of said Article VI.

Introduction.

No citations of authority are necessary for that elementary rule of American law that a treaty is a part of the supreme law of the land. Hence nothing will be said on that point.

The case at bar has to do only with the correct interpretation of Article VI of the treaty between the United States and the Kingdom of Sweden, first promulgated in 1783. That treaty by its own terms expired a few years later, but the article was renewed and incorporated into a new treaty in 1816, and again renewed and incorporated into the treaty of 1827 between the same countries, and as thus renewed it remained in force at the time of the death of the decedent.

So far as we have been able to discover, this article has been before the courts for construction in but one case preceding the present one. That case was *In Re Stixrud's Estate*, 58 Washington 339, 33 L. R. A. (N. S.) 632, 109 Pac. 343. In

the *Stixrud* case the Washington court reached a conclusion diametrically opposed to the decision in the Iowa case now up for review. In both cases the state law under which the cases arose were identically the same in principle, the only difference being that in the Washington law the rate of taxation was higher than in the Iowa law.

In the *Stixrud* case the court gave effect to the broad and equitable principle that the intent of the parties should be carried out if possible, whereas in the Iowa case there appears to be a straining of the terms of the treaty to make it say something which it is quite evident it was never intended to say. Every doubt is resolved by the Iowa court in favor of the state law, notwithstanding that by so doing, violence is done to long and well established rules of construction.

Much reliance is placed upon two cases as supporting the decision in the present case. These two cases are *In Re Strobel's Estate*, 39 N. Y. Supplement 169, and *Frederickson vs. Louisiana*, 23 Howard 445. At first thought after a hasty examination of these cases, that may appear plausible, owing to some dictum appearing in the opinions. But a more careful reading will show, as pointed out in the argument, that they do not support the decision at all. Both cases arose under a treaty with a different meaning, and under state laws radically different from the Iowa law because they did not discriminate against aliens.

Brief of the Argument.

1.

The case of *In Re Strobel's Estate*, *supra*, and *Frederickson vs. Louisiana*, *supra*, are not decisive of this case and do not control it, because in neither the New York law nor in the Louisiana law under which those cases respectively arose, was there any discrimination against aliens. Aliens and citizens in the same circumstances were taxed alike under those laws. Furthermore, the treaty there involved was worded differently and had a different meaning from the article of the Swedish treaty involved in this case.

2.

The word 'freely' used in the first sentence of Article VI of the treaty cannot logically and reasonably be given any other construction but that it means that property passing by descent as in this case, shall be taken free from *discriminating* burdens of any kind, and among which are included *discriminating taxes*. It must be given that meaning, or we are driven to the extreme and absurd position which was adopted

by the Iowa court, namely, that it means nothing at all, and that its presence is to be ignored in the interpretation of the treaty, notwithstanding that to so do is to nullify and render of no effect a large part of the article in which it appears. There is and can be no middle ground between these two interpretations.

(a) To ignore its presence and attach no meaning to it, as did the Iowa court, is not compatible with sound and well established rules of law, because it has always been a cardinal rule of construction for all instruments, and especially contracts, that no word or phrase is to be ignored in interpreting the instrument if any reasonable and consistent meaning can be attached to it.

(b) A reasonable and consistent meaning can be given to the word 'freely' used in that sentence of the treaty. See

In Re Estate of Stixrud, 58 Washington 339, 33 L. R. A. (N. S.) 632, 109 Pacific 343.

(c) "Where a particular construction of a statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute."

White, Justice in *Knowlton vs. Moore*, 178 U. S. 41, 44 L. Ed. 984.

(d) A treaty should be liberally construed to preserve the rights which may be claimed under it.

Hauenstein vs. Lynham, 100 U. S. 483, 25 L. Ed. 628.

(e) When a treaty is susceptible of two constructions, the one restrictive of the rights which may be claimed under it, and the other favorable to them, the latter construction is to be preferred.

De Geoffroy vs. Riggs, 133 U. S. 258, 33 L. Ed. 642;

In Re Anderson's Estate, 147 N. W. (10.) 1098.

(f) If the construction put upon the article by the Iowa court is correct, then it is within the power of the United States, or of any of the States within the Union, to completely nullify the article by taxing the alien's inheritance 100 per cent, and the article might as well not have been adopted.

3.

A reasonable construction of the words 'or otherwise' used in the first sentence of Article VI of the treaty, must be that they include a case where that the property passes *ab intestato*. Otherwise those words are ignored in the interpretation, which is not compatible with sound rules of construction.

4.

The right to dispose of one's property to whomever he pleases is not fully granted nor fully protected, unless there goes with it the right of the devisees or grantees, whoever they may be, and whether citizens or aliens, to receive the property when it is disposed of.

(a) Whenever a state is permitted to levy a discriminating tax on the right of certain parties to receive their inheritances, which tax is so high that a person nearing the end of life may well ponder whether in view of the high tax exacted he might not better disinherit altogether such parties, then it cannot be said that the person is permitted to 'freely' dispose of his goods and effects. The discriminating tax operates as a deterrent and a burden to the exercise of his free will.

5.

The Iowa collateral inheritance tax law, in so far as it attempts to tax non-resident aliens more than citizens or resident aliens, is included within the phrase '*droit de detraction*', as used in Article VI of the treaty of 1783, revived in 1827, between the United States and Sweden. This is supported by the following considerations:

(a) It is not the *removal of the property* which gives the right and power to collect the excessive tax, but an examination of the nature of the old laws of *droit de detraction* shows that there were always two other elements present which made such laws effective. They were, First, That the owner of the property taxed was a non-resident or foreigner, and therefore he was denied some rights given to citizens; and Second, The Government levying the tax had possession of the property. These were the two, and the only distinguishing features of such laws.

(b) If it were not for the fact existing in the case now before the court, that some of the heirs are non-resident aliens, the extra 15 per cent of tax would be void under the Iowa Constitution, and it would also be void at common law.

Article 1, Section 6, Iowa Constitution;

Article 1, Section 22, Iowa Constitution;

Pacific Junction vs. Dyer, 64 Iowa, 38;

Marshalltown vs. Blum, 59 Iowa, 184;

State vs. O. & C. B. Ry. Co., 113 Iowa, 30, 35.

(c) Hence, the Iowa collateral inheritance tax law, depending for the validity of the excessive tax upon exactly the same reasons and circumstances as did the old laws described by the phrase '*droit de detraction*', it must of necessity be the

same kind of a law to the extent that it attempts to tax non-resident aliens more than citizens.

(d) The State could not levy a *discriminating* tax upon our own citizens merely because he was removing his property to another country.

6.

The intent of the parties to a contract or treaty is the controlling consideration in the interpretation thereof. And considering it as a matter of evidence only, the two Governments in entering into the treaty, cannot have contemplated that the phrase '*droit de detraction*' meant simply a tax upon the removal of goods from one country to another, because such a tax would be an export tax, and as an export tax is forbidden by the United States Constitution, nothing would have been

Addendum to Section 6.

(b) *The discriminating tax proposed to be taken from alien heirs the Iowa collateral inheritance tax law, is within the mischief sought to be remedied by Article VI of the treaty, and therefore it should be regarded as included within the terms of the treaty. Article VI is remedial in character, and therefore it includes evils within its spirit, even though not within the letter thereof.*

Church of the Holy Trinity vs. United States, 143 U. S. 457, 36 Id. 226.

spectively in the years, 1845, 1844, 1846, 1845, 1844, 1827, 1795, and 1778.

See the different treaties in 'Treaties and Convention between the United States and Foreign Powers. 1889.

ARGUMENT.

1.

This case is not controlled by the decision in the cases of *In Re Strobel's Estate*, 39 New York Supplement, 169, and *Frederickson vs. Louisiana*, 23 Howard 445, because the facts in those cases were very different, and they did not involve the same issues.

As stated in the introduction, there are no cases directly in point excepting *In Re Stixrud's Estate*, 58 Washington 339, 33 L. R. A. (N. S.) 632, 109 Pac. 343, but the conclusion of the Iowa court is strenuously proclaimed as established by a couple

of cases which, when analyzed, it will be seen have distinguishing features so pronounced that they do not in fact support it at all. But these contentions put forth with so much of assurance, have thrown such a haze about the matter that it becomes necessary to clear away a few cobwebs before we can get a clear view of the question to be decided. When that has been done, it is believed that the question will be found to be very simple and direct.

The two cases which have been most urgently set forth as upholding the validity of the Iowa law against the treaty provision cited, are *In Re Strobel's Estate*, 5 App. Div. 621, 39 N. Y. Supplement 169, and *Frederickson vs. Louisiana*, 23 Howard 445, 16 L. ed. 577.

The case of *In Re Strobel's Estate*, it is claimed upholds the proposition that, an inheritance tax is merely a regulation of inheritance and that it may be levied without violating treaty provisions such as article VI of the Swedish treaty, and, that a *droit de detraction* tax is simply and only a tax upon the removal of goods from one country to another,—in other words, an export tax. The feature which distinguishes *In Re Strobel's Estate* from this case is, that the New York law under which that case arose, was a plain collateral inheritance tax law, *taxing all collateral heirs, whether citizens or aliens, and without regard to residence*, a flat 5 per cent inheritance tax. It contained not a single word of a discriminating feature against anybody. The heirs who brought that case were subjects of Wurtemberg, and they claimed that the state *had no right to levy any inheritance tax at all*, because of the treaty with Wurtemberg which specified that there should be no *droit de detraction* taxes imposed by one country against the subjects of the other. They did not complain of discrimination for there was no discrimination. Since there was no discrimination attempted between citizen and alien heirs, the New York law did not partake of the nature of a *droit de detraction* tax. That law did not depend for its validity and effectiveness upon the only features which made the old *droit de detraction* taxes effective, namely, the nonresidence and alienage of the persons who paid the taxes, and the possession of their property by the Government levying the tax. The Iowa law does discriminate between citizens and alien heirs, and to the extent that it taxes aliens more than its own citizens it does depend for its validity and effectiveness upon those very things. To say as did the New York court, that aliens are bound by the internal regulation of our affairs in which they are not discriminated against, and that they must pay the same tax as our own citizens, is one thing, and with all good law, and equitable law. But to say as did the Iowa court, that they are liable for a much larger tax than our own citizens, is decidedly a different thing, and inequitable law. The one

case is no authority for the other because they are based upon decidedly different states of fact, and the relief prayed for in the one is not the relief prayed for in the other.

It is further claimed from *In Re Strobel's Estate*, that it is established by that decision that a '*droit de detraction*' tax is a tax or duty levied only upon the removal of goods from one country to another,—an export tax. It is true that in the opinion of the Surrogate, he makes that assertion, but he cites only Wheaton's International law for authority. But since the New York law did not contain any of the distinguishing features upon which alone the old '*droit de detraction*' duties rested for their validity and effectiveness, it is plain that what the Surrogate there said upon that subject was mere *obiter dictum* and is not entitled to the force of a decision. The Surrogate merely quotes from Wheaton, and in looking up Wheaton we find that he cites not a single authority for the statement contained in his text. It appears therefore that what that author said is a mere chance assertion made in the multitudinous duties of writing a text book, and that it is not the voice of an authority who has considered the question from the facts of a case in which it is involved. Such general assertions are easily made, and often when applied to concrete facts are far from being correct. In contrast therewith, we find that in nearly all of the treaties where the term is used, that the reference is to '*all duties of detraction*', or to '*duties of the same kind*', or a similar phrase is used, showing that the contracting parties themselves recognized the phrase as pertaining to duties of a general kind and of a certain nature, and that they did not refer to any one specific kind alone.

The case of *Frederickson vs. Louisiana*, *supra*, also arose under the treaty with Wurtembreg, and is distinguishable from the present case in two most important respects. First, The Louisiana law there considered, like the New York law, did not discriminate against aliens, and bore no resemblance to the Iowa law, and, Second, The treaty involved in that case was worded differently and has a different meaning from the Swedish treaty. The Louisiana law provided that the tax there involved should be paid by '*each and every person* (Citizens of Louisiana as well as aliens) *not being domiciliated in this State, and not being a citizen of any other State or Territory in the Union.*' A citizen of Louisiana, therefore, domiciliated in some other State was liable for the tax the same as an alien. AND A CITIZEN OF LOUISIANA DOMICILIATED IN SOME FOREIGN COUNTRY WAS LIABLE FOR THE TAX THE SAME AS AN ALIEN, which is not true of the Iowa law. It will thus be seen that aliens were not discriminated against in the Louisiana law, which alone is a sufficient reason for pronouncing that decision right, and which is the same reason as that advanced for upholding the New York law in *Strobel's Estate*, *supra*.

But this was not the only ground for the decision in the *Frederickson* case. The treaty involved in that case provided:

"The citizens or subjects of each of the contracting parties shall have power to dispose of their personal property WITHIN THE STATES OF THE OTHER, by testament, donation, or otherwise; and their heirs, legatees and donees, BEING CITIZENS OR SUBJECTS OF THE OTHER CONTRACTING PARTY, shall succeed", etc.

Article III, Treaty with Wurtemberg. Treaties and Conventions between the United States and Foreign Powers. 1889 page 1145.

There are two states of fact to which the wording of the above treaty may apply literally. One of them would be where a citizen or subject of the United States died possessed of property located in Wurtemberg, and leaving it to citizens or subjects of Wurtemberg. But, if we apply the treaty to such a case then we reach an absurd result, for, then no right will be granted by the treaty to either of the contracting parties that was not possessed by them before the treaty was made. Subjects of Wurtemberg inheriting property within the jurisdiction of their own country, would not be much troubled by any taxes which the United States might attempt to collect from them. Such a notion is absurd. But if we apply the treaty to a case where that a subject of Wurtemberg died possessed of property within the United States, and leaving that property to subjects of Wurtemberg, then we have a case where that the heirs would be vitally affected by any taxes which the United States might levy upon it. And it was to this last supposed case, and vice versa, that the court decided in the *Frederickson* case that the treaty applied. Fink, the decedent in the *Frederickson* case, was a citizen of Louisiana, and the property left by him was located in Louisiana, and not in Wurtemberg, as according to the terms of the treaty it should be to come within its provisions. It will thus be seen that there were two reasons for the decision in the *Frederickson* case, either one of which was sufficient in itself, and neither one of which appears in the case now before the court. The distinctions above set forth seem sufficient to show that neither the case of *In Re Strobel's Estate*, *supra*, nor *Frederickson vs. Louisiana*, *supra*, are of any value in determining the meaning and proper construction of the Swedish treaty.

Reference may also be made in this connection to the case *Mager vs. Grima*, decided by this court in 8 Howard 493, 12 L. ed. 1170. In that case the same statute of Louisiana was involved as in the *Frederickson* case. And in that case the court

states that the statute is nothing more than a regulation providing who may and who may not inherit from a deceased person. But as before stated, since the Louisiana statute did not discriminate against foreigners, that was the only reasonable conclusion which the court could reach. Moreover, in the *Mager* case, no reference whatever is made to any treaty provision, and the case appears to have been decided without any thought that a treaty might affect it in any way.

2.

That construction should be adopted which will give a reasonable effect to the instrument and make it mean something, and not that which will nullify it and render it of no effect.

Before the treaty between the two countries was concluded it is elementary that the United States had the inherent right to tax alien Swedish heirs a higher tax than its own citizens. It might, if it saw fit, exercise that right to the extent of confiscating all inheritances going to Swedish heirs by the simple device of taxing them a 100 per cent inheritance tax, while at the same time exempting its own citizens from paying any tax. The same right existed for Sweden with respect to American heirs inheriting Swedish property. After the adoption of article VI of the treaty as a contract between the two countries, plainly showing that rights were given to the subjects of the two countries to inherit property from the subjects of the other, was the United States under no obligation to refrain from exercising the right which it had theretofore possessed of confiscating the entire inheritances of Swedish heirs? And if it was left under some such obligation, did that obligation extend simply to refraining from confiscating 100 per cent of the inheritances, and if not that, then what per cent might they still take by excessive taxation and yet keep within the treaty? Could the United States solemnly agree that Swedish aliens might receive and inherit property 'freely' and without paying *droit de deduction* taxes, and yet, without breaking the treaty, levy a 100 per cent tax on the transaction by which the heirs came into possession of it so as to take the entire property and leave nothing for the Swedish alien to receive? Could that be done by means of a discriminating tax? Would that be regarding our treaty as a binding obligation, or, according to the now somewhat famous phrase, as a 'scrap of paper'?

Article 1 of the Swedish treaty provides that Swedish vessels may 'freely' enter the ports of the United States, etc. Now by way of analogy, let us suppose that the State of New York had provided that all Swedish vessels entering the port of New

York City should pay inspection or other charges four times higher than those charged against domestic vessels or the vessels of other nations. We will say that it was claimed not as a tax, but as inspection or port charges. Will it be claimed that under such a law that Swedish vessels were accorded the right given them by article 1 of the treaty to 'freely' enter the port? Suppose again that the state had imposed some other burdensome restriction, such as for instance, that before Swedish vessels could enter the port of New York that they should proceed to St. Augustine, Florida, or some other out of the way place, for the purpose of being inspected by health officers there, when the same was not required of other vessels. An unreasonable restriction of course, but there would be nothing in international law or elsewhere, that would prohibit the state of New York from doing that if the word 'freely' does not have a meaning in the treaty.

The Iowa court has construed the treaty as if the word 'freely' was not in it at all. It is a cardinal rule of construction that a contract must be construed so as to give effect to every word contained in it if that is possible.

It could not be maintained that under the treaty as it is with the word 'freely' in it, and giving effect to that word, that a state would be permitted to enforce a statute which provided that, the Swedish heir before he would be permitted to take his inheritance, should take an oath that he had never borne arms against the United States and that he would never in the future do so; or, that before they could take their inheritance, that they should become citizens of the United States; or, that before they could take their inheritance, that they should appear before some certain Notary Public in some out of the way place and there execute before him whatever papers might be necessary to close up the estate, when such things were not required of our own citizens or of the subjects of other countries. These would be impediments which, we take it are prohibited by the use of the word 'freely' in the treaty. If these things which we have mentioned cannot be done by a State because of the treaty, wherein is there any distinction in principle between any of those mentioned things and the levying of a collateral inheritance tax that bears heavier upon the alien than upon the citizen? It is evident that there is none.

It will not do to say, as the Iowa court has said, that the tax is imposed before it reaches the heirs. Such a position is not logical nor consonant with long established principles of law. Until the moment of the descent cast occurs, until the moment of death, there is no authority in the state to levy a *discriminating* tax upon the property of a person still living. When that event happens, then *ipso facto* the property passes to the Swedish alien heirs as well as to the resident heirs, if

any, and there is no interval of time between the death of the decedent and the acquisition of his property by the heirs, during which the tax can be imposed after the death of decedent and before his property reaches the heirs. It is a tax upon the transmission, operating at identically the same moment, and upon the same event as that which transfers the property, and as such it operates directly to impede the free transfer of property which is guaranteed by the treaty, because under it the decedent is not permitted to, and cannot transfer his property with the same effect to aliens as to citizens.

As the courts have well said, no one will contend that the treaty gives greater rights to foreigners than to citizens. But does it follow that because the treaty has not gone to that extreme on the one side that therefore, it must of necessity have gone to the other extreme and permitted restrictions more burdensome upon Swedish aliens than upon citizens? We think not. Reasonable construction should prevail here, and where a treaty admits of two constructions, that construction should be adopted which guarantees the rights which may reasonably be claimed under it. The word 'freely' negatives the contention of the Iowa court that there is no middle ground between the two extremes above referred to.

Article II of the treaty, set out in the statement of the case near the beginning of this brief, clearly shows the sense in which the word 'freely' was used in the treaty, and that it means free from the payment of money or compensation of any kind. The same word cannot reasonably be construed to have different meanings, in different places in the same treaty.

If the word 'freely' is held to mean nothing at all and not to qualify the meaning of the article in question, then it is left within the power of the United States to completely nullify the article. It is a rule of construction for all instruments that no word is to be considered as surplusage if any reasonable meaning can be given to it. To permit the United States to levy a tax such as the Iowa tax, and to ignore the word 'freely', is to leave it within the power of any one of the United States to destroy the very right which the treaty was plainly intended to secure by the simple device of levying a 100 per cent tax. Such construction is destructive of the very purposes of the treaty. That every rule of law requires a construction that will uphold rather than destroy rights secured by the treaty is forceably shown by the case of *De Geoffroy vs. Riggs*, 133 U. S. 258, 33 L. ed. 642, where this court in construing a treaty between the United States and France, held that the word 'states' used in the treaty included the District of Columbia and the Territories. In the course of its reasoning it uses language very applicable to this case. It says:

"This construction, as well observed by counsel, gives consistency and harmony to all the provisions of the article, and comports with its character as an agreement intended to confer reciprocal rights on the citizens of each country with respect to property held by them within the territory of the other * * *. It is a general principle of construction with respect to treaties that they shall be liberally construed, so as to carry out the apparent intention of the parties to secure equality and reciprocity between them."

De Geoffry vs. Riggs, 133 U. S. 258, 33 L. ed. 642.

Along the same line of reasoning this court has given utterance to this thought in other cases as follows:

"By every sound rule of construction, an instrument should be interpreted by the context, so that if possible to give a sensible meaning and effect to all of its provisions; and so as to avoid rendering portions of it contradictory and inoperative by giving effect to some clauses to the exclusion of others."

Ladd vs. Ladd, 49 U. S. 10, 12 L. ed. 967, page 974.

"Where a particular construction of a statute will occasion great inconvenience or produce inequality and injustice, that view is to be avoided if another and more reasonable interpretation is present in the statute."

Knowlton vs. Moore, 178 U. S. 41, 44 L. ed. 984.

"It is a rule in construing treaties as well as laws, to give a sensible meaning and effect to all of its provisions if that be practicable. The interpretation, therefore, says Vattel, which would render a treaty null and inefficient cannot be admitted; it ought to be interpreted in such a manner that it may have its effect, and not prove vain and nugatory * * * and it has been held by this court that where a treaty admits of two constructions, the one restrictive of the rights that may be claimed under it, and the other favorable to them, *the latter is to be preferred.*"

De Geoffry vs. Riggs, *supra*.

Thoroughly in harmony with the spirit and purpose of the above quotations from the decisions of this court, the Supreme Court of the State of Washington in construing and interpreting the effect of Article VI of the Swedish treaty as pertaining to a law of that State similar to the Iowa law, said:

"To whatever extent the right or privilege of a citizen of the United States to take property by testament or inheritance is impaired by our own laws, whether such laws

relate to taxation or succession, to that extent will the rights of the citizens of Norway and Sweden be impaired, without violating the terms or spirit of this treaty. The language of the treaty giving the citizens of the contracting parties the right to dispose of their goods and effects by testament, and the right to receive the succession, must mean the right to so give and receive as such right may be defined by the general laws in force in the country where the property is situated. *It could not mean otherwise, because there is no law to which we may turn, or which the contracting parties could have in view, in the making of the treaty, defining testamentary and succession rights, save the laws of the respective countries.* There is no universal or international law of succession to property. In order then to give force and effect to the treaty, and avoid the destruction of the very end it was plainly intended to accomplish, we must conclude that the testamentary and inheritance rights secured thereby are such that they cannot be impaired except as such rights and privileges of citizens may be impaired by the laws of their own country. * * * The treaty must be held to mean that, in so far as the rights to succession of property of deceased persons are concerned, the citizens of each country stand on an equal footing."

In Re Estate of Stirrud, 58 Wash. 339, 33 L. R. A. (N. S.) 632, 109 Pacific 343.

The foregoing rules for the construction of treaties have been sanctioned and applied by this court in the following cases.

Frederickson vs. La., 64 U. S. 445, 23 How. 445, 16 L. ed. 577;

Sanchez vs. U. S., 216 U. S. 167;

Whitney vs. Robertson, 124 U. S. 190;

Bertram vs. Robertson, 122 U. S. 116;

Widenhus Case, 120 U. S. 1;

Campagne Francaise, etc., vs. Bd. of Health, 186 U. S. 380.

3.

The words 'or otherwise' used in the first sentence of Article VI, includes within the scope of the article a case where that the property passes by the ordinary statutes of descent.

Not only does the Iowa court hold that the word 'freely' is to be ignored in construing the article, but it also holds that no significance should be attached to the use of the words 'or

otherwise' used in the first sentence, and that they also should be ignored. It says:

"Treating the first paragraph (of article VI of the treaty in question), as relating to subjects of either country residing at home, it is manifest that there is nothing therein which forbids the levy of inheritance or succession taxes, when the property passes *ab intestato* to the heirs of such subject, no matter whether they be residents or nonresidents, aliens or subjects. The term 'freely dispose of' does not, as we view it, relate to property passing by descent. Such property is covered by the next sentence of the treaty, and in that there is no reference whatever to any taxes or duties. The only language with reference to property acquired by descent is found in the next sentence, relating to the duty called *droit de detraction*, and, as we have seen, that does not cover succession or inheritance taxes."

Transcript p. 14.

If the Iowa court is right, then the United States and Sweden entered into a treaty granting certain rights to persons in case property was given by will, but denied those rights in case property passed by the ordinary statutes of descent. What can have been the object in making such a distinction? The words 'or otherwise' are inclusive, and a reasonable construction should give effect to them. The sentence reads:

"The subjects of the contracting parties in the respective states may freely dispose of their goods and effects, either by testament, donation, *or otherwise*, in favor of such persons as they think proper; and their heirs, * * * shall receive the succession *even ab intestato*, either in person or by their attorney. * * * *These inheritances*, * * * shall be exempt from all duty called *droit de detraction*", etc.

Article VI, Transcript p. 5.

In the nature of things there could be no object for the contracting parties making such a distinction as the Iowa court draws. The absence of such an object should of itself be sufficient to show that the construction by the Iowa court is an unreasonable one. Not only is it unreasonable, but it is in contravention of the plain words of the article itself. It is evident that the words 'These inheritances' stand in apposition with the words 'goods and effects' in the preceding sentence, and that what is granted to the recipients of 'These inheritances' is also granted to the recipients of the 'goods and

effects' in the preceding sentence. The two sentences are part of the same article used to give expression to a single and complete thought.

4.

The right to give property by descent and the right to take property thus given, supplement each other; and the right to freely give property, as is provided in the treaty may be done, is not fully granted or given effect to, if the right to take the property thus given is denied to the heir, either in whole or in part.

The Iowa court has recently passed on this question in connection with the construction of Article V of the treaty with Great Britain of March 2nd, 1899. That article was:

"ARTICLE 5. In all that concerns the right of disposing of every kind of property, real or personal, citizens or subjects of each of the high contracting parties shall in the dominions of the other enjoy the rights which shall or may be accorded to the citizens or subjects of the most favored nation."

31 Stat. 1939, 1940.

The Iowa court in construing this article said:

"It is argued that this article does not purport to deal with the right of receiving property. It will be noted that Article 5 does not limit itself to the protection of 'the right of disposing', but purports to apply to 'all that concerns the right of disposing'. The right of the donor to give and the right of the donee to receive the gift are interdependent. THEY ARE PARTS OF THE SAME THING. Surely, therefore, the right of a donee to receive is something which 'concerns the right of disposing'".

Brown vs. Daly's Estate, Iowa, 154 N. W. 602.

The paramount consideration in construing treaty provisions having to do with the inheritance of property, is not so much to protect the deceased in disposing of his estate to whoever he pleases. For that, he must have looked primarily to the Government to which he owed allegiance. But when subjects of one country, choose to leave property to subjects of another, then there is every reason why that that other country should by treaty seek to protect the right of their subjects to receive the inheritance. The right to receive is a vital part

of such a treaty, and it must be considered if the compelling motive in entering into such treaties is recognized and the obligation lived up to in good faith. The right to give and to receive supplement each other. The one is not complete without the other.

It might be noticed that the decision in the Daly's Estate, was liberal construction, and if the same liberality had been indulged in construing the Swedish treaty, the decision could hardly have been as it was.

5.

A law operating in the same way, having the same effect, and which comes into operation only under exactly the same states of fact, as did the old *droit de deduction* laws, is inherently the same kind of a law even though it is given another name.

The old *droit de deduction* laws were laws that depended for their efficacy upon just two circumstances which had always to be present to make them enforceable. They were, First, The persons who must ultimately pay the tax levied, were aliens, and therefore denied rights given to citizens of the jurisdiction, and Second, The property out of which the tax was collected was in the possession of the Government levying the tax. These two elements made it quite easy for a Government, little concerned with humane rights, to enforce such laws. They were a survival of barbarism, having their beginnings in the dark ages of history when war was the chief occupation of men, and nations conducted themselves upon the principle that might makes right. But for the fact that the taxing Government had jurisdiction of the property the tax could not be enforced. But for the fact that the heir was an alien, and therefore denied the rights of a citizen, the domestic Laws of the country would give him relief. The State of Iowa has possession of the property in this case, and the heirs are alien Swedish subjects, who have not the same rights under our domestic laws as our own citizens, and the State of Iowa purposes to tax them a discriminating tax by a law depending for its efficacy upon exactly the same elements as did the old *droit de deduction* laws.

The Surrogate in *In Re Strobel's Estate*, 39 N. Y. Supplement 169, speaking of the New York law there involved said:

"It is not a tax upon the removal, but upon the right to take; a limitation upon the power of the testator to give, and upon the right of the heir or next of kin to receive.

Remove the disqualification of alienage, and what is it the heir is entitled to sell? Clearly, the property or interest therein which would pass to a citizen heir", etc.

But, the above language was used with reference to a law that made no discrimination against aliens. Therefore the alien heirs in that case, whether their alienage was removed or not, and whether before or after the payment of the tax, could sell and deliver what remained after the tax was taken out. *But that was precisely what the citizen heirs could do. The citizen heir and the alien heir stood upon the same footing before the New York law.* Clearly therefore, the New York law had none of the elements of a *droit de deduction* tax. It was simply a tax upon the right to take, applying to all persons alike, whether citizens or aliens.

The question in this case, is not whether an inheritance tax may be levied at all, but whether the treaty prohibits a state from exercising the right of regulation to the detriment of alien Swedish heirs by levying a *discriminating* inheritance tax which partakes of the nature and spirit of, and are to all intents and purposes *droit de deduction* taxes, as far as the excess is involved.

While a discriminating tax such as the Iowa law provides for, may not be considered as one upon the removal of property,—an export tax,—yet it is a tax upon the removal of the title or ownership and the beneficial enjoyment of the property. A law cannot be framed taxing such property or its owners a larger rate than property owned by our citizens without its being framed on the same plan, and depending for its efficacy upon the same circumstances and elements as a discriminating tax levied upon the mere removal of property. This is true because it is not the *mere removal* of the property that will give the right to levy a discriminating tax, but the foreign ownership thereof and the possession of the property by the Government levying the tax. The removal would be merely the time when they chose to enforce the payment just as the State of Iowa chooses to enforce its payment upon the death of the decedent. The State could not levy a *discriminating* tax upon one of our own citizens, merely because he was removing his property to another country.

A reference should here be made to the nature of an inheritance tax, and to one or two decisions having to do with that subject. That the right to receive property by inheritance is a privilege which may be taken away by the legislature of the State, is conceded as well established. And that the state may tax the privilege, or the transmission, when permitting it to operate, is also well established.

United States vs. Perkins, 163 U. S. 625, 41 L. ed. 287;
Knowlton vs. Moore, 178 U. S. 55, 44 L. ed. 969.

These decisions are not questioned. The Iowa court on this subject says:

"The tax is imposed before it reaches the heirs or devisees as the case may be, and the property passes after it has suffered a diminution to the amount of the tax."

Transcript p. 15.

This was evidently called forth by remarks of this court in *United States vs. Perkins, supra*, and *Knowlton vs. Moore, supra*, to the effect that it was not until the property had yielded its contribution to the state that it became the property of the legatee. Those remarks of this court were appropriate in the cases where they were uttered. But the *United States vs. Perkins* and *Knowlton vs. Moore, supra*, had nothing whatever to do with the levying of a *discriminating inheritance tax upon property passing to aliens* protected by treaty provisions. They had to do simply with the question of whether inheritance taxes could be levied upon our own citizens. No treaty rights were involved. They did not decide whether a discriminating inheritance tax could be so levied as to partake of the nature of a *droit de deduction* tax in the face of a treaty prohibited that kind of a tax, and which also provided that property might be *freely disposed of* by the subjects of the respective countries.

The thought back of the remark that the property passes *after* it has suffered diminution to the amount of the tax, evidently was that the property to the amount of the tax passes direct to the state, and the remainder passes direct to the heirs, or that the inheritance was permitted to operate only on the condition that the tax was paid to the state. This must be true for, there cannot be an interval of time intermediate the time of the death of decedent and the payment of the tax, during which interval the title is in no one. *Ipsa facto* upon the death of the decedent the title must vest somewhere.

But this was not the thought in mind when the Iowa law was passed, for it makes the tax upon the personal property belonging to the estate a lien upon the realty belonging thereto, and vice versa, and in addition, it makes the administrator, executor, all heirs and legatees personally liable for the payment of the tax. These provisions creating liens, and making administrator and heirs personally liable for the payment of the tax upon the property are out of harmony with every rule of law pertaining to the giving and receipt of property by death, if it be true that the property does not pass instantly upon the death of the ancestor, but awaits the payment of the tax. On the other hand, if the part exacted as the tax does not pass at all to the heirs, but goes direct to the state, then they are superfluous. That is, unless it was meant that

the heirs were to occupy the character of a surety for the tax, which is absurd. Can there be an interval of time intermediate the death of the ancestor and the payment of the tax, during which the title is in no one, but resting in abeyance and subject to vest here or there dependent upon circumstances, and during which interval the state can step in and levy a tax without taxing either the property or the heirs?

To hold that the tax is a tax upon the transmission, and that the property passes at once upon the death occurring subject to the lien of the tax, makes the whole harmonious with other rules of law pertaining to the subject. It will surely seem to be proper and logical that the ordinary rules of construction should be followed, and that the property should be held to pass subject to the lien of the tax as it is universally understood and acted upon by both the bar and business interests of the country.

6.

It is evident when considering the inherent policy and fundamental laws of the United States that it was not the intent of the parties that the phrase '*droit de detraction*' was used in the treaty to denote simply a tax upon the removal of goods.

When we remember that it is written into the United States Constitution that neither the nation itself, nor any one of the states composing it, shall ever levy a tax upon articles exported from the country, no adequate reason can be found for entering into the obligation that no *droit de detraction* tax should be levied if that term was understood by the contracting parties to mean only a tax upon the removal of goods. In 1827 when Article VI of the treaty was last adopted by the countries concerned, the Constitution had been in operation for forty years, and there is no record that an attempt was ever made to change those provisions of the Constitution, or that an export tax was ever attempted. If, therefore, that was the only meaning in which the phrase was used, then in the sentence containing that prohibition nothing whatever was granted to Sweden that she had not enjoyed unmolested for nearly half a Century preceding the adoption of the article. If such was the only meaning attached to the phrase in 1827, then the reason for such a provision disappears, and if there was no reason for it, it is not likely that it would have been entered into.

That this is a matter to be considered in arriving at the meaning of the treaty is supported by the decision of this court in *De Geoffroy vs. Riggs*, *supra*, where Justice Field says:

"To construe the first clause as providing that Frenchmen shall enjoy the right of possessing personal and real property by the same title and in the same manner as citizens of the United States, in States, so long as their laws permit such enjoyment, is to give a meaning to the article by which nothing is conferred not already possessed, and leaves no adequate reason for the concession by France of rights to citizens of the United States, made in the third clause. We do not think this construction admissible. It is a rule in construing treaties as well as laws, to give a sensible meaning to all their provisions if that be practicable."

De Geoffroy vs. Riggs, supra.

It is conceded that a tax upon the removal of goods by alien heirs is a *droit de detraction* tax, but it is contended that the term covers any other kind of tax partaking of the same nature. And, since a tax upon the removal of goods cannot be levied by the United States, or any of them, because of the Constitution, it is not reasonable to hold that the contracting parties in using that term, used it in a restricted sense to apply only to a kind of tax that could not be imposed because of the Constitution, and did not use it in a larger sense to apply to all taxes by nature of the same kind, and to the imposition of which there was no impediment, and therefore a real danger of their being levied.

In practically all of the treaties with foreign countries the *droit de detraction* tax is referred to as of different kinds. In the treaties with the following countries, namely, Bavaria, Hesse, Nassau, Saxony and Wurtemberg, concluded respectively in the years 1845, 1844, 1846, 1845 and 1844, the following provision on the subject is found verbatim in each.

"EVERY KIND of *droit d'aubaine*, *droit de retraite*, and *droit de detraction*, or tax on emigration, is hereby, and shall remain, abolished, between the two contracting parties, their states, citizens, and subjects, respectively."

Treaties & Conventions between the U. S. and Foreign Countries, 1889, pp. 45, 562, 747, 981, 1144.

In the treaties with the Hanseatic Republic, 1827; Spain, 1795; the language is 'exempt from ALL duties of detraction'. In the treaty with Sweden of 1783 and 1827, it is 'All duty called *droit de detraction*', and in the treaty with France of 1778, the language is:

"Shall be exempt from *droit de aubaine*, or other similar duty under what name soever, * * * shall be exempt from ALL *droit de detraction*, or other duty of the same kind."

Treaties and Conventions, *supra*.

The language of the above treaties seem to establish beyond reasonable controversy that a *droit de deduction* tax was not regarded by the contracting parties as one only upon the removal of goods to another country, but that it was a general term including taxes of many different kinds, but having a certain nature, and that the term was used to include them all.

CONCLUSION.

To levy a tax of 20 per cent because a naturalized citizen exercises the human instinct of leaving a portion of his property to foreign relatives is so large as to shock the moral sense of justice existing in mankind. The persons who pay this tax, whether aliens or citizens, have contributed great stores to the wealth of the nation, both in a material sense and in the character of her people. Public policy requires that such laws should be restricted in their application to the fewest possible cases. They breed discord and dissatisfaction, not only among the aliens but among our own people, for their effect is felt by relatives at home, as keenly as abroad. And especially is this true where there exists a treaty plainly drawn in the thought that the citizens of both countries stood on the same footing, and that such a discriminating tax is forbidden.

That we have as a nation been accused of breaking our treaty obligations is well known. And that public policy requires that we should no longer leave ourselves open to that accusation is shown by the writings of many eminent Americans. Ex-President Taft writing on that subject in the New York Independent of February 2nd, 1914, says:

" * * * it becomes important, in the maintenance of peace, that each stable government * * * should be able to perform its promises promptly, and should certainly not keep them to the ear and break them to the hope. Nice distinctions based on precedents * * * have more weight with learned statesmen * * * than with an angered people. When they suffer injustice, they look to the substance of the international contract for their protection, and if that is not performed, and the breach is an outrage upon their own race and their own kith and kin, their indignant feelings is dangerous to the peace between the two nations."

Similarly, Nicholas Murray Butler, writing in the same publication under date of November 27th, 1913, says:

"Public opinion in the United States * * * is so careless, not to say contemptuous, of treaty obligations, that

we have as a nation lost the respect of men and of peoples that we cannot afford to do without * * *. Whenever a bauble of material gain strikes our fancy we cry and storm until we get it, and then grasp it eagerly, regardless to whom it belongs or of what pledges we have made in respect of it. An eminent European statesman once said in my own hearing that never again would the Government of his nation make, with his consent, a treaty with the United States; and the reason he gave was that the United States had proved itself to be internationally incompetent. He pointed out that the United States had more than once revealed its incapacity to enforce its treaty obligations. * * * Until the people of the United States are ready to look upon a treaty obligation as an honorable man does his word or his bond, there is no prospect of our leading the World's opinion in the development of improved international relations. * * * In other words, we must form the habit of behaving in international affairs like gentlemen."

The above quotations from eminent Americans is enough to show that public policy requires liberality in the construction of treaties if we are to maintain our leadership among the peoples of the World.

A comparison of the opinion of the Washington court in *In Re Stixrud's Estate*, *supra*, with the opinion of the Iowa court in the case at bar, cannot fail to show, it seems to us, that the Iowa court has failed to catch the spirit of fairness in the thought of which the treaty was drawn, and in the thought of which it should be construed. It has construed the treaty provision so that almost the entire article is nullified and rendered of no effect, and whether we regard it from the standpoint of the first sentence in the article as affected by the word 'freely', or from the standpoint of exemption from *droit de detraction* taxes, the same result is reached, namely, that an article was here written and solemnly incorporated into the treaty, but nothing whatever is guaranteed or secured thereby, and it is left to the whim or caprice of each one of the states to say whether or not the provision shall be effective, or whether it is to be regarded as a mere jumble of words. Such would surely be a most anomalous thing, and such cannot have been the intent of the parties to it.

All of which is respectfully submitted.

NELSON MILLER,
Attorney for Plaintiff in Error.

Dated, LeMars, Iowa, November 15, 1916.

BRIEF AND ARGUMENT FOR DEFENDANT IN ERROR

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No. **85**

A. M. DUUS, Administrator of the Estate of John Peterson, Deceased,

Plaintiff in Error,

vs.

W. C. BROWN, Treasurer of the State of Iowa.

IN ERROR TO THE SUPREME COURT OF THE
STATE OF IOWA.

H. M. HAYNER, *Attorney General of Iowa,*

C. A. ROBBINS, *Assistant Attorney General,*

Attorneys for Defendant in Error.

PROOF OF SERVICE.

I hereby accept and acknowledge due and legal service of the within Brief and Argument, and acknowledge receipt of a true copy thereof, on this, day of April, 1917.

.....
Attorney for Plaintiff in Error.

IN THE
SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1916.

No. 351.

A. M. DUUS, Administrator of the Estate of John Peterson, Deceased,

Plaintiff in Error,

vs.

W. C. BROWN, Treasurer of the State of Iowa.

IN ERROR TO THE SUPREME COURT OF THE
STATE OF IOWA.

BRIEF AND ARGUMENT FOR DEFENDANT IN
ERROR.

STATEMENT OF THE CASE.

The defendant in error is content with the statement of the case as made by the plaintiff in error as set forth in his brief and argument at pages one to five thereof.

ERRORS RELIED UPON.

The plaintiff in error relies upon two propositions for reversal.

I.

That the statute of the state of Iowa imposing the tax of 20% upon property passing to subjects and residents

of Sweden is in violation of Article VI of the treaty of 1827 between the United States and Sweden and is therefore void.

II.

That such statute is in violation of Article II of the same treaty, which article contains the so-called favored nation clause, when taken in connection with and aided by the treaties between the United States and Germany and between the United States and the other nations named at page three of the brief of plaintiff in error.

The defendant in error will attempt to discuss these two propositions in their order as above stated.

BRIEF.

I.

The constitution and laws of the United States made in pursuance thereof and treaties made under the authority of the United States are the supreme law of the land, anything in the constitution or laws of any state to the contrary notwithstanding.

Constitution of the United States, Art. VI, Sec. 2;
Whitney vs. Robertson, 124 U. S., 190 at 194.

II.

TREATY PROVISIONS.

The subjects of the contracting parties in the respective states may *freely* dispose of their goods and effects, either by testament, donation, or otherwise, in favor of such

persons as they think proper; and their heirs, in whatever place they shall reside, shall receive the succession even *ab intestato*, either in person or by their attorney, *without having occasion to take out letters of naturalization*. These inheritances, as well as the capitals and effects which the subjects of the two parties, in changing their dwelling, *shall be desirous of removing from the place of their abode*, shall be exempt from all duty called "*droit de traction*" on the part of the *Government of the two states, respectively*. But it is at the same time agreed that nothing contained in this article shall in any manner derogate from the ordinances published in Sweden against emigrations, or which may hereafter be published which shall remain in full force and vigor. The United States, on their part, or any of them, shall be at liberty to make, respecting this matter, such laws as they think proper.

Article VI, Swedish Treaty;

8 Stat. at L. 60, 79.

The King and the United States engage mutually not to grant hereafter any particular favor to other nations in respect to *commerce and navigation* which shall not immediately become common to the other party, who shall enjoy the same favor *freely*, if the concession was *freely* made, or on allowing the same compensation, if the concession was conditional.

Article II, Swedish Treaty;

8 Stat. at L. 60, 79.

III.

By every sound rule of construction, an instrument should be interpreted by the context, so as if possible to give a sensible meaning and effect to all its provisions; and so as to avoid rendering portions of it contradictory and inoperative by giving effect to some clauses to the exclusion of others.

Ladd vs. Ladd et al, 49 U. S. (8 How.) 10, at 27, 28;
U. S. vs. Wong Kim, Ark., 169 U. S., 649, 653.

IV.

Treaties shall be liberally construed so as to carry out the apparent intention of the parties to secure equality and reciprocity between them. As they are contracts between independent nations, in their construction words are to be taken in their ordinary meaning, as understood in the public law of nations, and not in any artificial or special sense imposed upon them by local law, unless such restricted sense is clearly intended. And it has been held by this court that where a treaty admits of two constructions, one restrictive of rights that may be claimed under it and the other favorable to them, the latter is to be preferred.

Geofroy vs. Riggs, 133 U. S., 258, at 271.

V.

The foregoing rules for the liberal construction of treaties have been applied and followed by the United States Supreme Court in the following cases:

Frederickson vs. La., 64 U. S., 445, 448;
Sanchez vs. U. S., 216 U. S., 167, 175;
Whitney vs. Robertson, 124 U. S., 190;
Bartram vs. Robertson, 122 U. S., 116;
Wildenhuss' Case, 120 U. S., 1;
Campagnie Francaise, etc., vs. Bd. of Health, 186
U. S., 380, 393; 183 U. S., 424.

VI.

A tax imposed upon the right conferred by the state to inherit is not unconstitutional whether imposed upon citizens and aliens alike or upon aliens alone.

Mager vs. Grima, 49 U. S. (8 How.) 490, 493;
Succession of Sala, 24 So. Rep. 674;
In re Anderson's Estate, 147 N. W., 1098;
Frederickson vs. La., 64 U. S., 445, 448.

VII.

Duties of "droit detraction" or tax on emigration and "taxes upon removal" are not taxes upon inheritance or succession.

In re Strobel's Estate, 39 N. Y. Supp., 169;
Succession of Sala, 24 So. Rep. 674;
Wheaton's International Law, by H. B. Atlay, Sec.
82, p. 134, Fourth Edition.
Articles I and III of the Treaty with Bavaria, concluded January 21, 1845.
Treaties in Force 1904, page 57.

Articles I and III of the Treaty with Hesse, concluded May 14, 1845.

Treaties in Force 1904, page 688.

Articles I and III of the Treaty with Wurtemberg, concluded April 10, 1844.

Treaties in Force 1904, page 806.

Article X of the Treaty with Mecklenburg-Schwerin, concluded December 9, 1847.

Treaties in Force 1904, pages 510, 511.

VIII.

The inheritance tax is not levied on property, neither is it upon person, it is upon the right to dispose of property and it is not until the property has yielded its contribution to the state that it becomes the property of the legatee.

U. S. vs. Perkins, 163 U. S., 625, 628, 629;

Herriott vs. Potter, 115 Iowa, 648;

Magoun vs. Ill. T. & S. Bank, 170 U. S. 290.

IX.

The thing forming the universal subject of taxation upon which inheritance and legacy taxes rest, is the transmission or receipt of property occasioned by death.

Knowlton vs. Moore, 178 U. S., 41 at page 59.

X.

An inheritance tax has nothing to do with commerce or with imports or with exports.

Treaties in Force 1904, page 754;

Mager vs. Grima, et al., 49 U. S., (8 How) 490 at 493;

Hall vs. Virginia, 75 U. S., 168 at 183, 184;

Nathan vs. La., 49 U. S., 73 at 79, 80;

In re Anderson's Estate, 147 N. W., 1098.

XI.

The term "goods and effects" does not as a rule include real estate and it is only when it is clearly manifest from the terms of the instrument in which the phrase appears that a contrary meaning was intended that the term will be construed to include anything but movable property.

Miss. vs. Sharp, 47 U. S., 301, 321;

Meier vs. Lee, 106 Ia., 303, 308.

XII.

The regulation of the disposition of the property of her citizens by descent, devise or alienation is a power reserved to the states and is in no way controlled by the United States, and where the state confers upon a person, class or kindred the right if they be citizens of the state and denies them the right if they be aliens, non-residents, the United States may by treaty remove the disqualification existing because of alienage. This only was the purpose of the treaty under consideration. It simply declares that where the party succeeding is disqualified by alienage such disqualification is removed.

Watkins vs. Holman, 41 U. S., 63;
Wilcox vs. Jackson McConnell, 38 U. S., 498, at 516;
Kerr vs. Moore, 22 U. S., 565, 570, 571;
U. S. vs. Crosby, 11 U. S., 115;
Opel vs. Shoup, 100 Ia., 407 at 423.

XIII.

The purpose of the treaty of 1783 between the United States and Sweden was to remove the disability imposed upon aliens by laws similar to Chapter 85, Acts of the 22d General Assembly of Iowa, and can have no application in this case, for the alien heirs may now freely inherit the property here involved without becoming naturalized citizens and without other condition, under the provision of Code Section 2889.

Doehrel vs. Hillmer, 102 Ia., 169; 71 N. W. 204.

ARGUMENT.

I.

From the foregoing authorities, defendant in error will attempt to establish that Article VI of the Swedish Treaty is inapplicable to the case at bar for the following reasons:

(a) The first sentence of this article provides for the free disposition of property by subjects of the contracting parties to such persons as they think proper, but this relates only to instances where the property in question is located in a country other than that of which the owner is a subject.

(b) This sentence also provides that the heirs of such parties shall receive the succession, even *ab intestato* either in person or by their attorneys *without having occasion to take out letters of naturalization* and this is in no sense a stipulation against a succession tax.

(c) The second sentence of this article provides that such inheritances and effects shall be exempt from "*droit de traction*" duties on the part of the government of the two states respectively where the parties changing their dwelling are desirous of removing such property and this provision only amounts to a stipulation against a removal tax and in no way prevents the levying of a succession tax.

(d) The tax imposed by the state statute attaches instantaneously upon the death of the ancestor and before the right of *removal of the non-resident heir* can be exercised.

II.

Article II of the Swedish treaty relied upon by plaintiff in error and containing the so-called favored nation clause is by its own terms restricted to *commerce and navigation* and, hence, has no application to a succession tax.

III.

At page four, plaintiff in error calls attention to the fact that article III of the treaty of 1783 is set out on page 12 of the manuscript and further states:

"The Iowa court in its opinion erroneously includes article III of the treaty of 1783 as a part of the treaty of 1827. That article was not made a part of the treaty of 1827."

While in the opinion of the court set forth in the transcript article III is quoted (see transcript page 12) yet this copy of the opinion was the unofficial report as published in the Northwestern Reporter and in the revised opinion this article of the treaty is eliminated. See *In re Estate of Peterson*, 168 Iowa, 511 at 513, also the same case *Lawyers' Reports Annotated*, 1916 A, 469 at 471 where article III is also eliminated.

IV.

It is conceded that any state law in conflict with the terms of a treaty concluded under authority of the United States must yield thereto. It is also conceded that all treaties should be literally construed, giving to the construction a sensible meaning and one wherein the conclusion reached shall not in any way appear absurd.

The rule for liberal construction when applied to treaties, is not materially different from the same rule when applied to the constitution and laws of the United States as is evidenced by an examination of the cases decided by this court.

The rule as laid down by the Supreme Court of the United States in *Geofroy vs. Riggs*, 133 U. S. 258, is quoted in full above. In that case at page 279 the court say:

“It is a rule, in construing treaties *as well as laws*, to give a sensible meaning to all their provisions if that be practicable. The interpretation, therefore, says Vattel, which would render a treaty null and inefficient can-

not be admitted; it ought to be interpreted in such a manner that it may have its effect, and not prove vain and nugatory.”

In the case from which we have just quoted the court held that the clause “all the states of the Union” included the District of Columbia, and at page 269 the court cites two cases where in construing certain laws they had reached the same conclusion, and we are not able to find in the opinion anything requiring a more liberal application of the rule when applied to treaties than when applied to the constitution and laws of the United States.

This court has said that a treaty is placed on the same footing as the laws of the United States and is made of like obligation and is to have no efficacy over such law.

Whitney vs. Robertson, 124 U. S. 194.

Exemption from a discriminating tax against aliens imposed by our statute is here claimed under the provisions of Article VI of the treaty between the United States and Sweden concluded April 3, 1783.

An inheritance tax is in the nature of a duty, excise or impost.

Knowlton vs. Moore, 178 U. S. 41, at pages 78-83;

People vs. Union Trust Co., 225 Ill. 179.

The treaty of 1783 with Sweden contained an article under which exemption from an *inheritance tax might have been claimed with good reason*. That article provided that no greater duties or imposts of what nature

soever they may be *should be imposed upon the subjects of the King of Sweden than should be imposed upon the subjects of the most favored nation.*

Article III, Treaty of 1783, Treaties and Conventions, p. 799.

The treaty of 1783 expired by its own terms in 1796.

Treaties in Force 1904, page 744.

The first inheritance or legacy tax of which we have any record was imposed by an act of congress in 1797.

Knowlton vs. Moore, 178 U. S. at page 56.

We consider it a noteworthy fact that Article III of the treaty with Sweden concluded in 1783, which treaty expired in 1796, was not revived by the treaty concluded September 4, 1816, nor was it revived by the treaty concluded July 4, 1827. Article III became obsolete in 1796. It was under the terms of this article that exemption from the tax imposed upon aliens in this case was first claimed, the claim being abandoned when it was discovered that the article was obsolete.

It is our contention that the entire treaty between the United States and Sweden relates to commerce and navigation and has nothing to do with inheritance taxes. The treaty of 1783 was one of Amity and Commerce, and the only article therein that in our opinion might be construed to apply to inheritance taxes, is Article III, and this was omitted from the treaty of Commerce and Navigation concluded in 1827. It was said by this court in *Frederickson vs. Louisiana* (64 U. S. 445, 448), that "the

cause of the treaty was, that the citizens and subjects of each of the contracting powers were or might be subject to onerous taxes upon property possessed by them within the states of the other by reason of their alienage and its purpose was to enable such persons to dispose of their property, paying such duties only as the inhabitants of the country where the property lies pay under like conditions.”

There was a “cause” for the adoption of every treaty, and every treaty has its purpose. It is well known that under the laws in force at the time of conclusion of the treaty of 1783 aliens were prohibited from inheriting property within many of the states of the Union, except in some cases they were permitted to inherit in case they, within a limited time, became naturalized citizens of the state.

There were no inheritance taxes in force in 1783 when this treaty was concluded. The first inheritance tax of which we have a record, as we have heretofore said, was adopted by Congress in the year 1797, or about the time the treaty of 1783 expired. The cause of the treaty then could not be the imposition of such a tax but was undoubtedly the laws disqualifying aliens from inheriting, and the purpose was to confer upon them the right to inherit without becoming naturalized citizens.

The Supreme Court of Iowa in its opinion in this case, 168 Iowa, 511, at 519 says:

“Doubtless no reference to succession or inheritance taxes was made because such were unknown

to this country at the time the original treaty was negotiated, and although such taxes had become general either in Europe or in England when the treaty was last made, there was no change in its phraseology, and the matter was left open to state action."

If our conclusion as to the cause and the purpose of the treaty is correct, it is immaterial so far as this case is concerned whether or not the words "Goods and effects" include real estate.

V.

Plaintiff in error relies upon a case entitled "*In re Estate of Stixrud*, 109 Pac. 343; 33 L. R. A. (N. S.), 632."

There are several reasons why this case is of doubtful authority.

The regulation of the disposition of the property of her citizens by descent, devise, or alienation is a power reserved to the states and is in no way controlled by the United States.

The opinion *in re Stixrud* is to the effect that an inheritance tax is a limitation placed upon the right of inheritance or to receive property by devise, or alienation.

The fallacy of this opinion is exposed in *Knowlton vs. Moore*, 178 U. S. 41.

That case determines the right of the United States to place a tax upon the right to inherit. It was there contended that as the tax was upon the right to inherit and that as the regulation of this right was exclusively exercised by the states, the United States was without the

power to impose such a tax. Justice White speaking for the court says concerning this contention, pages 58, 59:

“The limitation which would exclude from Congress the right to tax inheritances and legacies, is made to depend upon the contention that as the power to regulate succession is lodged solely in the several states, therefore Congress is without authority to tax the transmission or receipt of property by death. * * * *But the fallacy which underlies the proposition contended for is the assumption that the tax on the transmission, or receipt of property occasioned by death is imposed upon the exclusive power of the state to regulate the devolution of property upon death. The thing forming the universal subject of taxation upon which inheritance and legacy taxes rest is the transmission or receipt, and not the right existing to regulate.*”

All that is granted the subjects of Sweden by Article VI of the treaty is the right to inherit, and that when they desire to remove the property they inherit or may own within the United States they shall not be subject to a tax upon the removal thereof.

The opinion *In re Stixrud* was by a divided court, two of its members dissenting.

It is directly opposed to the unanimous opinion of the appellate division of the Supreme Court of New York in *re Strobel's Estate*, 39 N. Y. Supp. 169, and it is opposed to the opinion of the Iowa supreme court in its interpretation of the treaty with Sweden in *Meier vs. Lee*, 106 Ia. 303, 308.

In the opinion in *In re Stixrud* it is stated that the fact that the law of Louisiana did not discriminate against aliens in the imposition of an inheritance tax *was a determining factor in Frederickson vs. Louisiana*, 64 U. S. 445, *when in fact it was not*.

The court separates the words "freely dispose of their good and effects" from the context and by placing undue emphasis upon them as thus separated reaches a conclusion that is not warranted if the entire article of the treaty be considered in connection with the words so emphasized and with the evident intent of the parties to the treaty.

It is provided in Article I of the treaty of 1827 that vessels belonging to the citizens of the contracting parties may freely enter the ports, etc., of the other party. In the same article it is provided that Swedish and Norwegian vessels shall be treated upon the same footing as national vessels with respect to the duties or charges of whatever kind or denomination.

It is clear that in this instance the parties did not intend to be understood as using the words "*freely enter the ports*," etc., to mean free from any charge or duty, and the words "*freely dispose of their goods and effects*" as used in Article VI of the treaty of 1783 are used in identically the same manner and with the same meaning as the words "*freely enter the ports*" in Article I of the treaty of 1827.

Article VI of the treaty of 1783 divides naturally into two parts. The first part ending with the period following the word "naturalization". That part of the article

relates to the inheritance of "goods and effects". The second part of the article relates to a tax or duty called "*droit de traction*" or a tax upon the removal of property inherited. It provides that "these inheritances" (goods and effects) "as well as the capitals and effects which the subjects of the two parties, in changing their dwelling, shall be desirous of removing from the place of their abode, shall be exempted from all duty called '*droit de traction*,' " etc.

In the case of *United States vs. Perkins*, 163 U. S., at 627, 628 and 630 this court said:

"While the laws of all civilized States recognize in every citizen the absolute right to his own earnings, and to the enjoyment of his own property, and the increase thereof, during his life, except so far as the State may require him to contribute his share for public expenses, the right to dispose of his property by will has always been considered purely a creature of statute and within legislative control."

"In this view, the so called inheritance tax of the State of New York is in reality a limitation upon the power of a testator to bequeath his property to whom he pleases; a declaration that, in the exercise of that power, he shall contribute a certain percentage to the public use; in other words, that the right to dispose of his property by will shall remain, but subject to a condition that the State has a right to impose. Certainly, if it be true that the right of testamentary disposition is purely statutory, the State has a right to require a contribution to the public treasury before the bequest shall take effect. Thus the tax is not upon the property, in the ordinary sense of the term, but upon the right to dis-

pose of it, and it is not until it has yielded its contribution to the State that it becomes the property of the legatee."

"The legacy becomes the property of the United States only after it has suffered diminution to the amount of the tax, and it is only upon this condition that the legislature assents to a bequest of it."

And, in the case of *Magoun vs. Illinois Trust & Savings Bank*, 170 U. S., at 288, 289 and 290, this court says:

"An inheritance tax is not one on property but one on the succession. The right to take property by devise or descent is the creature of the law, and not a natural right—a privilege, and therefore the authority which confers it may impose conditions upon it. From these principles it is deduced that the States may tax the privilege, discriminate between relatives, and between these and strangers, and grant exemptions; and are not precluded from this power by the provisions of the respective state constitutions requiring uniformity and equality of taxation."

"Now, the law in question is nothing more than an exercise of the power which every State and sovereignty possesses, of regulating the manner and term upon which property, real or personal, within its dominion may be transmitted by last will and testament, or by inheritance; and of prescribing who shall and who shall not be capable of taking it. Every State or nation may unquestionably refuse to allow an alien to take either real or personal property situated within its limits, either as heir or legatee, and may, if it thinks proper, direct that property so descending or bequeathed shall belong to the

State. In many of the States of this Union at this day real property devised to an alien is liable to escheat. And if a State may deny the privilege altogether, it follows that, when it grants it, it may annex to the grant any conditions which it supposes to be required by its interests or policy."

VI.

The entire treaty applies to commerce and an inheritance or succession tax has no concern with commerce or with imports or with exports. It was so held in *Mager vs. Grima, supra*.

Plaintiff here contends that the opinion in *re Strobel's Estate*, 39 N. Y. Supp. 169, was based upon the fact that the law of New York did not discriminate between citizens and aliens in the imposition of an inheritance tax. In that case the surrogate says, page 170:

"By the terms *droit d'aubaine*, *droit de retrait*, *droit de detraction*, and duties of detraction, were not intended taxes upon successions or transfers of property."

Citing *Frederickson vs. La.*, 64. U. S. 445.

On appeal the appellate division of the New York court held "PER CURIAM. We agree with the conclusion arrived at by the learned surrogate that the tax in question is not a detraction tax but a succession tax. * * * All that is granted him BY THE TREATY is the property to which he succeeds under the laws of the state shall not be taxed when he comes to take the property or its proceeds out of the state."

The court in *re Stixrud* falls into the same error with regard to *Frederickson vs. Louisiana*, supra, and declares that the fact that the law of Louisiana did not discriminate in the imposition of a tax was a determining factor in that case. The court in that case says:

“But we concur with the Supreme Court of Louisiana in the opinion that the treaty does not regulate a testamentary disposition of citizens or subjects of the contracting powers, in reference to property within the country of their origin or citizenship. * * * The case of a citizen or subject of the respective countries residing at home and disposing of property there in favor of a citizen or subject of the other was not in the contemplation of the contracting powers, and is not embraced in this article of the treaty. This view of the treaty disposes of this cause upon the grounds on which it was determined in the Supreme Court of Louisiana.”

The court clearly declares the ground upon which the cause is determined and the fact that the law imposing a tax did not discriminate between citizens and aliens was not a fact taken into consideration in determining the case. The case could have been determined upon that fact as could the Strobel case in New York, but neither case was determined upon anything contained in the law; in both cases the court interprets and applies the treaty under consideration.

In the *Succession of Sala*, 24 So. Rep. 674, the court had under consideration a case arising under the law of Louisiana which like the law of this state imposed a tax that discriminated between citizens and aliens. The tax

was imposed upon non-resident aliens at the rate of ten per cent, no tax being imposed upon a citizen of Louisiana or of the United States. The court was considering the rights of aliens as guaranteed under Article XI of the treaty with Spain. That article of the treaty differs materially in its provisions from the treaty here under consideration, but we consider the language of the court as being pertinent to the question here presented. On rehearing of the case the court said (second column, bottom of page 678):

“The State of Louisiana has not made the right of Spanish subjects to inherit real estate within her territory conditioned or contingent upon the payment of ten per cent upon the value of said property for the use of the state. It has, however, enacted a law that Spanish subjects so inheriting shall pay a tax. We find nothing in the treaty prohibiting the state in the matter of real estate from passing such a statute. In our opinion, the treaty stipulations do not reach that branch of the case.”

Prior to the adoption of the present statutes of this state, this court said in *Doehrel vs. Hillmer*, 102 Ia. 169, that non-resident aliens could not acquire real estate in this state under the law then in force.

That law required that within five years from the date of acquiring said property it must be placed in the actual possession of a relative of the owner within the third degree and that such occupant shall become a naturalized citizen within ten years from the purchase of said property.

The court held in that case that the non-resident alien took the land subject to the "conditions and limitations imposed by the statute," and that the time allowed by statute was within "a reasonable time to sell the same and withdraw the proceeds" as required by the treaty then under consideration.

Speaking of that treaty the court said:

"The evident purpose was to so protect the citizens and subjects of both countries in their property interest that alienage would not affect the right of inheritance."

We believe that to be the purpose of the treaty here under consideration, and if such was its purpose it has no application to this case for under the laws of this state (Code Sec. 2889) the alien heirs of John Peterson may acquire and hold without becoming naturalized citizens all or any part of his property, for he possessed only 80 acres of land and about \$5,000 of personal property.

The statute reads as follows:

"Non-resident aliens, or corporations incorporated under the laws of any foreign country, or corporations organized in this country one-half of the stock of which is owned or controlled by non-resident aliens, are prohibited from acquiring title to or holding any real estate in this state, except as hereinafter provided, save that the widow and heirs and devisees, being non-resident aliens, of any alien or naturalized citizen who has acquired real estate in this state, may hold the same by devise, descent or distribution, for a period of twenty years; and if at the end of that time such real estate has not been sold to a

bona fide purchaser for value, or such alien heirs have not become residents of this state, such land shall escheat to the state; provided that nothing in this act contained shall prevent aliens from having or acquiring property of any kind within the corporate limits of any city or town in the state, or lands not to exceed three hundred and twenty acres in the name of one person, or any stock in any corporation for pecuniary profit, or from alienating or devising the same. The provisions of this chapter shall not affect the distribution of personal property, and shall apply to real estate heretofore devised or descended when no proceedings of forfeiture have been commenced."

Code Section 2889.

In the language of the court in the Succession of Sala, *supra*, the State of Iowa has not made the right of the Swedish subjects in this case to inherit property within her territory conditioned or contingent upon the payment of a tax nor upon any other conditions whatever. It has, however, enacted a law that said heirs so inheriting shall pay an inheritance tax in excess of the amount they would pay if citizens. We find nothing in the treaty applicable to this case.

Appellant contends that so much of the tax imposed by statute as exceeds the tax imposed upon citizens is a tax upon the removal of the property.

The tax imposed by statute is upon the right of inheritance conferred by the state. That right accrues at the moment of the death of the owner of the property. The

state's right accrues at the same moment of time and the tax is imposed without regard to the disposition made of the property by those inheriting.

A sufficient answer to this contention is that the tax imposed is not conditioned upon the removal of the property from the state and the tax is not remitted in case the property is not removed.

If the beneficiaries, after the inheritance is cast, become naturalized citizens the state's right to the tax is in no way affected thereby and the amount of tax to be collected remains the same.

The court below, in our judgment, properly interpreted the treaty at 168 Iowa, 519, when it said:

“Finding nothing in the treaty under consideration which exempts property within this jurisdiction passing to collateral heirs, and nothing providing for or guaranteeing uniformity therein, nothing to the effect that they shall be the same upon property passing to collateral heirs without regard to their citizenship, we are constrained to hold that there is nothing in our law in conflict with any of the treaty rights guaranteed to the citizens or subjects of the Kingdom of Sweden residing therein.

“This is the pivotal point in the case, and although the conclusion is in conflict with the learned opinion of the Washington Supreme Court, hitherto mentioned, we are not convinced of the soundness of its conclusion, and although we have read and reread that opinion, it is obvious that the conclusion reached is a strained one, due largely to the thought that the treaty was perhaps intended to and doubtless

should have been so made as to exempt property passing to non-resident aliens, no matter of what nationality, from every sort of succession or inheritance taxes, save such as were levied upon and collected from property passing to citizens and subjects of this country. We would be glad to come to this conclusion were we able to find language which would justify it, but after a careful study of the document we are forced to the conclusion that this treaty absolutely prohibits the levy of any succession or inheritance taxes upon property passing to collateral heirs, citizens and subjects of the Kingdom of Sweden, or that it contains no limitations whatever. As said in the beginning, there is, to our minds, no middle ground. No one contends that it absolutely inhibits all succession taxes, and we find no warrant for saying that it permits the levy of such taxes but only to the extent that they may be levied upon property passing to citizens and subjects of this country, or perhaps, to citizens and subjects residing abroad."

As there pointed out by the court there is a clear distinction between such a treaty and one like the British treaty where there is express provision against discrimination in succession taxes.

We respectfully submit that the judgment of the court below is right and should be affirmed.

Respectfully submitted,

H. M. HAVNER, *Attorney General of Iowa,*

C. A. ROBBINS, *Asst. Attorney General,*
Attorneys for Defendant in Error.



INDEX.

	Page
Statement of Case	1
Brief	2
Argument	8
Iowa Statute (2889)	22
Swedish Treaty:	
Art. II	3
Art. III	9
Art. VI	2
Other Treaties	5, 6
Cases Cited:	
<i>Ladd vs. Ladd</i> , 49 U. S. 10.....	4
<i>U. S. vs. Won Kim</i> , 169 U. S. 649.....	4
<i>Geofroy vs. Riggs</i> , 133 U. S. 258.....	4, 10
<i>Frederickson vs. La.</i> , 64 U. S. 445.....	5
<i>Mager vs. Grima</i> , 49 U. S. 490.....	5, 7
<i>In Re Anderson</i> , 149 N. W. 1098.....	5, 7
<i>Succession of Sala</i> , 24 So. 674.....	5
<i>In Re Strobel's Est.</i> , 39 N. Y. Supp. 169.....	5
<i>U. S. vs. Perkins</i> , 163 U. S. 625.....	6
<i>Herriott vs. Potter</i> , 115 Ia. 648.....	6, 17
<i>Magoun vs. Bank</i> , 170 U. S. 290.....	6, 18
<i>Knowlton vs. Moore</i> , 178 U. S. 41.....	6, 11, 12, 14
<i>Hall vs. Virginia</i> , 75 U. S. 168.....	7
<i>Nathan vs. La.</i> , 49 U. S. 73.....	7
<i>Miss. vs. Sharp</i> , 47 U. S. 301.....	7
<i>Meier vs. Lee</i> , 106 Ia. 303.....	7
<i>Watkins vs. Holman</i> , 41 U. S. 63.....	8
<i>Wilcox vs. Jalkson</i> , 38 U. S.	8
<i>Kerr vs. Moore</i> , 22 U. S.	8
<i>U. S. vs. Crosby</i> , 11 U. S. 115.....	8
<i>Opel vs. Shoup</i> , 100 Ia. 407.....	8
<i>Doehrel vs. Hillmer</i> , 102 Ia. 169.....	8
<i>In Re Estate Peterson</i> , 168 Ia. 511.....	10, 13
<i>Whitney vs. Robinson</i> , 124 U. S. 194.....	11
<i>People vs. Union Trust Co.</i> , 225 Ill. 179.....	11
<i>In Re Estate Stixrud</i> , 109 Pac. 343.....	14